

Applicant Details

First Name **Kirk**
 Last Name **Lancaster**
 Citizenship Status **U. S. Citizen**
 Email Address klancaster@stanford.edu
 Address

Address
Street 1788 Oak Creek Dr, Apt 409 City Palo Alto State/Territory California Zip 94304 Country United States

Contact Phone Number **920-460-0523**

Applicant Education

BA/BS From **University of Chicago**
 Date of BA/BS **August 2018**
 JD/LLB From **Stanford University Law School**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=90515&yr=2011
 Date of JD/LLB **June 15, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Stanford Law Review**
Stanford Law and Policy Review
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Sykes, Alan
asykes@law.stanford.edu
(650) 724-0718
Salgado, Richard
rsalgado@law.stanford.edu
650-284-9564
Letter, Dean's
deansletter@law.stanford.edu
650-723-4455
Srikantiah, Jayashri
jsrikantiah@law.stanford.edu
650-724-2442

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

June 12, 2023

The Honorable Juan R. Sánchez
United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street Room 14613
Philadelphia, PA 19106

Dear Chief Judge Sánchez:

I hope that this correspondence finds you well. I am a rising third-year student at Stanford Law School and an editor for the *Stanford Law Review* writing to apply to serve as your law clerk from 2025 to 2026. With three years of substantive work experience prior to law school, I am eager to apply my research and writing skills to the law clerk role. I greatly admire your service to the public interest throughout your career, something I hope to model in my own. My partner and I have discussed moving to the Mid-Atlantic and how it will be a priority region for us.

Growing up as a first-generation, LGBT individual in the rural Midwest, I've navigated diverse experiences that have given me a unique perspective. These views have enriched my studies, where I paired my STEM background with a strong desire to serve the public through law. After undergrad I spent three years in the professional world, sharpening my research and writing skills and cementing a foundation for my legal journey. My professional interests lie in international and national security law, especially in cross-border litigation and dispute resolution. I envision my future in public service, creating impactful legal solutions on the local or global level. Clerking in a federal district court is my next step in this journey. This position represents an invaluable opportunity to deepen my understanding of trial-level proceedings, develop my knowledge of both civil and criminal law, and refine my legal writing skills.

Please find attached my resume, references, law school transcript, and writing sample for your review. Professor Jayashri Srikantiah, Professor Alan O. Sykes, and Professor Richard Salgado have provided letters of recommendation in support of my application.

Working with you, Chief Judge Sánchez, is a top choice, and I would be very happy to fly out and interview in person if that is preferable and I am given the opportunity to do so. Thank you so much for your consideration.

Sincerely,

Kirk Lancaster
Stanford Law School

KIRK R. LANCASTER
klancaster@stanford.edu | 920.460.0523
Hometown: Neenah, WI

EDUCATION

Stanford Law School	Stanford, CA
Juris Doctor	expected 06/2024
<ul style="list-style-type: none"> Honors: Knight-Hennessy Scholarship (2021) (Stanford University, full tuition and stipend). Journals: Notes Editor, <i>Stanford Law Review</i> (2022-Present); Associate Editor, <i>Stanford Law and Policy Review</i> (2021-2022). Selected Activities: Co-President, Stanford National Security & the Law Society; Treasurer, Stanford Law & Technology Association; Professional Development Chair, SLS First-Generation and Low-Income Professionals; Member, SLS OutLaw. Graduate exchange student, Waseda University (早稲田大学) School of Law, Tokyo, Japan (10/2023-12/2023). 	
University of Chicago	Chicago, IL
B.A. Chemistry (Departmental Honors); B.A. Law, Letters, and Society (Departmental Honors)	08/2018
<ul style="list-style-type: none"> Selected Honors: Two-time Rhodes Scholarship Finalist (2018 & 2017), Phi Beta Kappa (2018), Astronaut Scholarship (2017) (nationally competitive STEM award), Student Government Leadership Award (2017), Dean's List (all quarters). Selected Activities: Varsity Athlete, Cross Country and Track & Field; Maroon Key Society (honorary society and student advisory group); President and Founder, UChicago igniteCS (STEM education after-school volunteer organization). Chemistry Honors Thesis: <i>Optical Resonance Imaging: An Approach to Ultrafast Imaging with Subdiffraction-Limited Capabilities</i> Law, Letters, and Society Honors Thesis: <i>A Multitude of Nuclear Sins: The 1985 U.S.-China Nuclear Cooperation Agreement</i> 	
Tsinghua University (清华大学)	Beijing, China
Inter-University Program for Chinese Language Studies	08/2015–06/2016
<ul style="list-style-type: none"> David L. Boren Scholarship (2015) (U.S. Department of Defense award for national security critical language study). Full-time, year-long intensive language immersion in modern Mandarin Chinese. 	
PROFESSIONAL EXPERIENCE	
Allen & Overy, LLP	Washington, DC
<i>Summer Associate, Litigation, Arbitration and Investigations</i>	06/2023–08/2023
Taiwan Ministry of Digital Affairs, Office of Minister Audrey Tang	Taipei, Taiwan
<i>Research Assistant, Technology and Democracy</i>	08/2023–09/2023
Immigrants' Rights Clinic, Stanford Law School	Stanford, CA
<i>Certified Student Attorney</i>	03/2023–06/2023
<ul style="list-style-type: none"> Wrote Federal Tort Claims Act (FTCA) complaint grounded in novel legal theory, as part of two-student team, on behalf of family separated at U.S.-Mexico border while seeking asylum; filed lawsuit in Northern District of California. 	
United States Department of Justice	Washington, DC
<i>Law Clerk, National Security Division, Foreign Investment Review Section</i>	06/2022–08/2022
<ul style="list-style-type: none"> Conducted legal research on CFIUS application to foreign technology platforms operating in the United States, including drafting decision memorandum assessing civil penalty of over \$10 million. Coauthored interagency referral letters on national security risks of undersea cable projects due to foreign influence. 	
Mandela Barnes for Wisconsin	Milwaukee, WI
<i>Research Fellow, U.S. Senate Campaign</i>	01/2022–11/2022
<ul style="list-style-type: none"> Drafted statements and policy memoranda and conducted opposition research for home-state U.S. Senate campaign. 	
Council on Foreign Relations	New York, NY
<i>Research Associate, Asia Studies</i>	09/2019–07/2021
<ul style="list-style-type: none"> Researched and wrote 70+ memos on Chinese foreign policy, technology policy, and U.S. national security strategy for CFR Senior Fellows, Drs. Mira Rapp-Hooper, Julian Gewirtz, and Adam Segal. Published research on global infrastructure investments in CFR Task Force Report on China's Belt and Road Initiative (2021). 	
Stimson Center	Washington, DC
<i>Junior Fellow, South Asia Program</i>	09/2018–08/2019
<ul style="list-style-type: none"> Co-led study on Indian nuclear doctrine and capabilities conducted for the U.S. Office of Net Assessment (DoD). 	
United States Department of State	Washington, DC
<i>Intern, Office of Chemical and Biological Weapons Affairs</i>	06/2017–08/2017
<ul style="list-style-type: none"> Prepared briefing materials and managed logistics for variety of diplomatic meetings and briefings on weapons of mass destruction issues, collaborating with interagency colleagues in DoD, the White House, the armed services, and the IC. Coauthored speech on chemical weapons delivered by National Security Advisor H.R. McMaster. 	

LANGUAGES AND INTERESTS

- Proficient in Mandarin Chinese; elementary knowledge of Spanish and Japanese.
- Interested in marathon running, road cycling, cheering for the Green Bay Packers, and spending time with family.

KIRK R. LANCASTER
klancaster@stanford.edu | 920.460.0523
Hometown: Neenah, WI

RECOMMENDERS

Professor Jayashri Srikantiah
Stanford Law School
jsrikantiah@law.stanford.edu
(650) 724-2442

Professor Alan O. Sykes
Stanford Law School
asykes@law.stanford.edu
(650) 736-8090

Professor Richard Salgado
Stanford Law School
RSalgado@law.stanford.edu
(650) 284-9564

REFERENCES

Elizabeth McIntyre
U.S. Department of Justice, National Security Division
Elizabeth.McIntyre@usdoj.gov
(202) 514-0551

Lisa Weissman-Ward
Stanford Law School, Immigrants' Rights Clinic
lweissmanward@law.stanford.edu
(650) 724-7396

Dr. Mira Rapp-Hooper (non-legal professional reference)
White House, National Security Council
Mireille.Rapp-Hooper@nsc.eop.gov
(202) 456-9246

Law Unofficial Transcript

Leland Stanford Jr. University
School of Law
Stanford, CA 94305
USA

Name : Lancaster, Kirk
Student ID : 06511432

Print Date: 06/11/2023

----- Academic Program -----

Program : International Policy
09/20/2021 : International Policy (MA)
Plan
International Security (SubPlan)
Status Active in Program

Program : Law JD
09/20/2021 : Law (JD)
Plan
Status Active in Program

Knight-Hennessy Scholars, 05/01/2021 -

----- Beginning of Academic Record -----

2021-2022 Autumn

Course	Title	Attempted	Earned	Grade	Equiv
LAW 201	CIVIL PROCEDURE I	5.00	5.00	P	
Instructor:	Sinnar, Shirin A				
LAW 205	CONTRACTS	5.00	5.00	P	
Instructor:	Kelman, Mark G				
LAW 219	LEGAL RESEARCH AND WRITING	2.00	2.00	H	
Instructor:	Mance, Anna				
LAW 223	TORTS	5.00	5.00	H	
Instructor:	Engstrom, Nora Freeman				
LAW 241L	DISCUSSION (1L): CONFLICT MANAGEMENT DESIGN	1.00	1.00	MP	
Instructor:	Martinez, Janet				
LAW TERM UNITS:	18.00	LAW CUM UNITS:	18.00		

2021-2022 Winter

Course	Title	Attempted	Earned	Grade	Equiv
LAW 203	CONSTITUTIONAL LAW	3.00	3.00	P	
Instructor:	Martinez, Jennifer				
LAW 207	CRIMINAL LAW	4.00	4.00	P	
Instructor:	Weisberg, Robert				
LAW 224A	FEDERAL LITIGATION IN A GLOBAL CONTEXT: COURSEWORK	2.00	2.00	H	
Instructor:	Bakhshay, Shirin				
LAW 7109	FOREIGN AFFAIRS AND THE CONSTITUTION	2.00	2.00	P	
Instructor:	Spiegel, Julia Blau				
LAW TERM UNITS:	11.00	LAW CUM UNITS:	29.00		

2021-2022 Spring

Course	Title	Attempted	Earned	Grade	Equiv
LAW 217	PROPERTY	4.00	4.00	P	
Instructor:	Thompson Jr, Barton H				
LAW 224B	FEDERAL LITIGATION IN A GLOBAL CONTEXT: METHODS AND PRACTICE	2.00	2.00	P	
Instructor:	Bakhshay, Shirin				
LAW 808Q	POLICY PRACTICUM: RESTORING NET NEUTRALITY	2.00	2.00	P	
Instructor:	Singel, Ryan Gregory Van Schewick, Barbara				
LAW 5013	INTERNATIONAL LAW	4.00	4.00	P	
Instructor:	Weiner, Allen S.				
LAW 7846	ELEMENTS OF POLICY ANALYSIS	1.00	1.00	MP	
Instructor:	Brest, Paul MacCoun, Robert J				
LAW TERM UNITS:	13.00	LAW CUM UNITS:	42.00		

2022-2023 Autumn

Course	Title	Attempted	Earned	Grade	Equiv
LAW 1013	CORPORATIONS	4.00	4.00	P	
Instructor:	Klausner, Michael				
LAW 2404	GLOBAL LITIGATION	4.00	4.00	P	
Instructor:	Hensler, Deborah R				
LAW 4015	MODERN SURVEILLANCE LAW	2.00	2.00	H	
Instructor:	Salgado, Richard				
LAW 5011	INTERNATIONAL INVESTMENT LAW	2.00	2.00	H	
Instructor:	Sykes, Alan				
LAW TERM UNITS:	12.00	LAW CUM UNITS:	54.00		

2022-2023 Winter

Course	Title	Attempted	Earned	Grade	Equiv
LAW 2402	EVIDENCE	5.00	5.00	P	
Instructor:	Fisher, George				
LAW 5014	INTERNATIONAL TRADE LAW	3.00	3.00	P	
Instructor:	Sykes, Alan				
LAW 7001	ADMINISTRATIVE LAW	4.00	4.00	P	
Instructor:	Freeman Engstrom, David				

Information must be kept confidential and must not be disclosed to other parties without written consent of the student.

Worksheet - For office use by authorized Stanford personnel Effective Autumn Quarter 2009-10, units earned in the Stanford Law School are quarter units. Units earned in the Stanford Law School prior to 2009-10 were semester units. Law Term and Law Cum totals are law course units earned Autumn Quarter 2009-10 and thereafter.

Leland Stanford Jr. University
School of Law
Stanford, CA 94305
USA

Law Unofficial Transcript

Name : Lancaster,Kirk
Student ID : 06511432

LAW TERM UNITS: 12.00 LAW CUM UNITS: 66.00

2022-2023 Spring					
Course		Title	Attempted	Earned	Grade
LAW	910A	IMMIGRANTS' RIGHTS CLINIC: CLINICAL PRACTICE	4.00	0.00	
Instructor:		Srikantiah, Jayashri Weissman-Ward, Lisa N			
LAW	910B	IMMIGRANTS' RIGHTS CLINIC: CLINICAL METHODS	4.00	0.00	
Instructor:		Srikantiah, Jayashri Weissman-Ward, Lisa N			
LAW	910C	IMMIGRANTS' RIGHTS CLINIC: CLINICAL COURSEWORK	4.00	0.00	
Instructor:		Srikantiah, Jayashri Weissman-Ward, Lisa N			
LAW TERM UNITS:			0.00	LAW CUM UNITS:	66.00

END OF TRANSCRIPT

Information must be kept confidential and must not be disclosed to other parties without written consent of the student.

Worksheet - For office use by authorized Stanford personnel Effective Autumn Quarter 2009-10, units earned in the Stanford Law School are quarter units. Units earned in the Stanford Law School prior to 2009-10 were semester units. Law Term and Law Cum totals are law course units earned Autumn Quarter 2009-10 and thereafter.

Alan Sykes
Professor of Law and Warren Christopher Professor in the Practice of International Law and Diplomacy
Senior Fellow, SIEPR
559 Nathan Abbott Way
Stanford, California 94305-8610
650-736-8090
asykes@law.stanford.edu

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

It is my great pleasure to write in support of the application of Kirk Lancaster for a position as your law clerk. Kirk was a student in my International Investment Law class last Fall, and my International Trade class this past Winter. I have also had numerous discussions with him outside the classroom about career and clerkship opportunities.

Kirk is one of our Knight-Hennessy Scholars at Stanford, which is a university-wide scholarship program providing a full scholarship and living stipend to graduate students in the arts, sciences, and professional schools. The application process is intensely competitive as you can imagine, and the receipt of a Knight-Hennessy Award is a mark of enormous distinction.

His long-term interests focus on international economic law and policy, especially as it pertains to international geopolitics. He spent a portion of his 1L Summer at the Justice Department working on national security and foreign investment review issues. This coming Summer he will spend a month in Taiwan at the Ministry of Digital Affairs (Kirk is fluent in Chinese). His professional goal is to find a legal position that blends national security policy with international trade and investment expertise.

My Investment Law class focused on international investment treaties and investor-state dispute settlement in relation to such treaties. Kirk was a terrific participant in class, displaying acute legal and policy acumen in discussing the substantive treaty obligations and the current controversies associated with investor-state disputes. His exam was excellent, easily earning an honors grade.

My International Trade Law class focused on the law of the WTO and national laws in its shadow, such as antidumping and countervailing duty law. Once again, Kirk was among the strongest students, able to interact effectively on both doctrinal issues and difficult economic policy issues.

If you take the opportunity to interview Kirk you will quickly discover that he is a thoughtful, reflective, and endlessly curious fellow. He is also soft-spoken and invariably cheerful – I have no doubt that he would be a pleasure to have in chambers.

In short, I recommend him to you most highly. Please do not hesitate to contact me if I can provide any further information on his behalf.

Sincerely,

/s/ Alan Sykes

Alan Sykes - asykes@law.stanford.edu - (650) 724-0718

Richard Salgado
Lecturer in Law
559 Nathan Abbott Way
Stanford, California 94305-8610
650-284-9564
rsalgado@law.stanford.edu

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

It is my pleasure to recommend Kirk Lancaster for a judicial clerkship. Kirk was a student in my Modern Surveillance class at Stanford Law School in the Autumn quarter 2022. I had the opportunity to observe first-hand Kirk's academic prowess and curiosity, interpersonal skills, and work ethic. Kirk is a strong candidate for a judicial clerkship and would make a valuable contribution.

Kirk stood out in the class. In his writing and class contributions, Kirk consistently demonstrated strong analytical skills in complex areas of the law. In class discussions, Kirk was always respectful and never shy, helping to generate a collegial environment for discussion. By asking thought-provoking questions and highlighting pertinent yet non-obvious policy considerations, Kirk fostered engaging and insightful conversations among fellow students.

The class required the submission of two papers. Both of Kirk's submissions reflected strong legal research and writing skills. Kirk's were among the best papers in the class and showcased an ability to identify key issues with nuance and precision, engage in well-reasoned analysis, and clearly articulate propositions supported by authority. Kirk's work in the class was likely informed by his experiences living abroad. Kirk has a global perspective, eager to understand how the government surveillance law in the US compares to and influences legal regimes in other jurisdictions.

In my career, I have had the opportunity to manage high-performing teams of attorneys at various stages of their careers. Even as a student, Kirk would fit in well with the high-caliber junior attorneys I've supervised. Kirk would make an excellent judicial clerk.

Sincerely,

/s/ Richard Salgado

Richard Salgado - rsalgado@law.stanford.edu - 650-284-9564

JENNY S. MARTINEZRichard E. Lang Professor of Law
and DeanCrown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610
Tel 650 723-4455
Fax 650 723-4669
jmartinez@law.stanford.edu

Stanford Grading System

Dear Judge:

Since 2008, Stanford Law School has followed the non-numerical grading system set forth below. The system establishes “Pass” (P) as the default grade for typically strong work in which the student has mastered the subject, and “Honors” (H) as the grade for exceptional work. As explained further below, H grades were limited by a strict curve.

H	Honors	Exceptional work, significantly superior to the average performance at the school.
P	Pass	Representing successful mastery of the course material.
MP	Mandatory Pass	Representing P or better work. (No Honors grades are available for Mandatory P classes.)
MPH	Mandatory Pass - Public Health Emergency*	Representing P or better work. (No Honors grades are available for Mandatory P classes.)
R	Restricted Credit	Representing work that is unsatisfactory.
F	Fail	Representing work that does not show minimally adequate mastery of the material.
L	Pass	Student has passed the class. Exact grade yet to be reported.
I	Incomplete	
N	Continuing Course	
[blank]		Grading deadline has not yet passed. Grade has yet to be reported.
GNR	Grade Not Reported	Grading deadline has passed. Grade has yet to be reported.

In addition to Hs and Ps, we also award a limited number of class prizes to recognize truly extraordinary performance. These prizes are rare: No more than one prize can be awarded for every 15 students enrolled in a course. Outside of first-year required courses, awarding these prizes is at the discretion of the instructor.

* The coronavirus outbreak caused substantial disruptions to academic life beginning in mid-March 2020, during the Winter Quarter exam period. Due to these circumstances, SLS used a Mandatory Pass-Public Health Emergency/Restricted Credit/Fail grading scale for all exam classes held during Winter 2020 and all classes held during Spring 2020.

For non-exam classes held during Winter Quarter (e.g., policy practicums, clinics, and paper classes), students could elect to receive grades on the normal H/P/Restricted Credit/Fail scale or the Mandatory Pass-Public Health Emergency/Restricted Credit/Fail scale.

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The five prizes, which will be noted on student transcripts, are:

- the Gerald Gunther Prize for first-year legal research and writing,
- the Gerald Gunther Prize for exam classes,
- the John Hart Ely Prize for paper classes,
- the Hilmer Oehlmann, Jr. Award for Federal Litigation or Federal Litigation in a Global Context, and
- the Judge Thelton E. Henderson Prize for clinical courses.

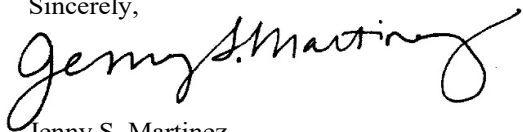
Unlike some of our peer schools, Stanford strictly limits the percentage of Hs that professors may award. Given these strict caps, in many years, *no student* graduates with all Hs, while only one or two students, at most, will compile an all-H record throughout just the first year of study. Furthermore, only 10 percent of students will compile a record of three-quarters Hs; compiling such a record, therefore, puts a student firmly within the top 10 percent of his or her law school class.

Some schools that have similar H/P grading systems do not impose limits on the number of Hs that can be awarded. At such schools, it is not uncommon for over 70 or 80 percent of a class to receive Hs, and many students graduate with all-H transcripts. This is not the case at Stanford Law. Accordingly, if you use grades as part of your hiring criteria, we strongly urge you to set standards specifically for Stanford Law School students.

If you have questions or would like further information about our grading system, please contact Professor Michelle Anderson, Chair of the Clerkship Committee, at (650) 498-1149 or manderson@law.stanford.edu. We appreciate your interest in our students, and we are eager to help you in any way we can.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, reading "Jenny S. Martinez". The signature is fluid and cursive, with the first name "Jenny" being more prominent and the last name "Martinez" following in a similar style.

Jenny S. Martinez
Richard E. Lang Professor of Law and Dean

Updated May 2020

Jayashri Srikantiah
Associate Dean of Clinical Education
Director of the Mills Legal Clinic
Professor of Law
Director, Immigrants' Rights Clinic
559 Nathan Abbott Way
Stanford, California 94305-8610
650-724-2442
jsrikantiah@law.stanford.edu

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

We write to strongly recommend Kirk Lancaster for a clerkship in your chambers. We have come to know Kirk well during the spring quarter in the Immigrants' Rights Clinic, which we co-teach. Kirk is an extraordinarily smart, kind, and dedicated individual with a keen interest in complex litigation. We are delighted to be able to recommend him for a clerkship in your chambers.

During the Spring 2023 quarter, Kirk and his clinic partner represented a family of three who fled El Salvador after their husband (father) was killed by MS-13 gang members. Upon arrival at the border, the government forcibly separated the family, taking the two young boys into immigration custody and sending their mother back across the border to Mexico by herself. The family was separated for five months. During this time, the family suffered severe harm and deep trauma. The goal for the quarter was twofold. First, Kirk and his partner were required to analyze the viability and strength of Federal Tort Claims Act (FTCA) litigation. Second, Kirk and his partner were required to draft and file a complaint requesting damages against the U.S. government based on the harm the family suffered as a result of the family separation.

Immediately after receiving his assignment at the start of the quarter, Kirk jumped right into research. He was focused and determined. While many students may have felt intimidated by a new area of law, Kirk exhibited confidence in not only identifying the relevant legal questions, but also engaging in the appropriate research. Kirk worked to prepare a lengthy and comprehensive legal research memo that included a step-by-step explanation of the FTCA as well as a detailed analysis applying the known facts to the legal standard. Kirk identified two possible areas of concern relating to the question of subject matter jurisdiction. He adjusted his priorities and spent additional time to conduct a robust and thorough analysis of these questions.

Kirk's legal research was exceptional. In a very short period of time, he was able to conduct detailed research that demonstrated a nuanced understanding of the case law. Kirk then prepared a strong litigation memo that will be used by future law students and lawyers on the team as the litigation progresses. Kirk's writing was clear and detailed. He understood the goal of the memo, which was to inform and advise his client's legal team moving forward.

After he completed his legal research and memo writing, Kirk turned to writing the actual complaint. It became immediately clear that Kirk understood the difference in audience, tone, and goals of the complaint, as compared to the memo. As he did with his initial research and memo writing, Kirk dove right in to drafting the complaint with energy and excitement. His writing was clear and crisp. He paid particular attention to the narrative and the theme as well as to organization, clarity, and accuracy. His attention to detail was apparent in the final work product, which was a well-written federal complaint.

Kirk had an opportunity to share his thinking and his writing with co-counsel, an experienced litigator at a nationally known non-profit. He stood out from his peers in how thoughtful he was in his approach to collaboration. He presented the legal theory, including its strengths and challenges, in a manner that was both sophisticated and accessible. He shared his own thinking before asking for feedback, which allowed co-counsel to engage with him in a sophisticated way. Kirk was, at all times, a consummate professional, acknowledging co-counsel's expertise while also exhibiting a quiet and respectful level of confidence that many law students lack. Kirk was incredibly open to feedback, subsequently incorporating it a way that demonstrated his depth of knowledge.

Throughout the quarter, Kirk took great care to keep his client informed and involved in her case. While Kirk was representing the entire family, his primary point of contact was the adult family member: the mother. She is a monolingual Spanish speaker who was extremely traumatized after having suffered horrific harms. Kirk approached his relationship with her from a strengths-based approach. He recognized not only the client's trauma but also her resiliency and unwavering commitment to supporting her children. He centered her needs and made sure she knew that she had agency over the case. As a result, Kirk thought critically about how to approach additional fact gathering with a trauma informed lens. He spent hours poring through the client's file to identify all of the previously known facts, especially those related to the harm she suffered. He did this to ensure that he would not have to ask any unnecessary questions that could retraumatize the client. The client repeatedly expressed her overwhelming gratitude for Kirk and his clinic partner.

Kirk was an incredible teammate to his clinic partner. He gave her space to shine and regularly praised her work. We rarely see

Jayashri Srikantiah - jsrikantiah@law.stanford.edu - 650-724-2442

this level of comradery in a law school setting where many students are looking to compete with one another. Kirk's approach was contagious. His clinic partner started to sing Kirk's praises, specifically noting how grateful she was to be paired with him. As teachers, we appreciated Kirk's kindness, humility, and exceptional ability to collaborate with others.

In addition to his individual client work, Kirk worked with three other students to draft a report identifying how bias in the criminal legal system impacts removal proceedings. In drafting the report, the students conducted a comprehensive survey of existing social science research on the disparate treatment of Black and Latinx individuals throughout the criminal process. For his part, Kirk focused on understanding how racial bias impacts the bail and charging decisions of players in the criminal legal system. As with his individual client work, Kirk approached the project with dedication. He worked to review a tremendous amount of information to distill the most useful sources for the report. He was, once again, a kind and thoughtful collaborator to his peers.

Kirk is an intelligent and energetic individual who will be a talented attorney. We recommend him with enthusiasm for a clerkship in your chambers. Please do not hesitate to contact us if you have any questions.

Sincerely,

/s/ Jayashri Srikantiah
Associate Dean of Clinical Education
Director of the Mills Legal Clinic
Professor of Law
Director, Immigrants' Rights Clinic

/s/ Lisa Weissman-Ward
Associate Director, Immigrants' Rights Clinic
Lecturer in Law

Jayashri Srikantiah - jsrikantiah@law.stanford.edu - 650-724-2442

Writing Sample #1
Kirk Lancaster – Stanford Law School

Note:

In the Immigrants’ Rights Clinic at Stanford Law School, I was part of a two-student team that wrote a Federal Tort Claims Act (FTCA) complaint on behalf of our clients, a migrant family who was separated by the U.S. government after crossing the U.S.-Mexican border. This is an excerpt from a “litigation strategy memo” that I separately prepared in May 2023.

This section of the memo assesses potential arguments behind motions to dismiss that will be brought by the defendants after we file our complaint. This excerpt of that section focuses on one of those arguments—the discretionary function exception—and offers a way to counter it.

This writing is my own and has not been edited by anyone else.

Writing Sample #1

Kirk Lancaster – Stanford Law School

Preempting 12(b)(1) Motions to Dismiss (FTCA Exceptions)

Plaintiffs in this FTCA litigation, a migrant mother and her two sons, are suing the United States for injuries attendant to and resulting from their forcible separation by U.S. Customs and Border Protection (CBP) employees after entering the United States. As this litigation unfolds, we anticipate Defendants to file a 12(b)(1) motion to dismiss for lack of subject matter jurisdiction. This section outlines a set of initial legal arguments to respond to that motion and highlights relevant facts to plead in the Complaint.

A 12(b)(1) motion will most likely be rooted in the statutory limitations on the types of tort lawsuits a plaintiff may pursue under the FTCA. The FTCA waives sovereign immunity for the United States “under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.” *Fazaga v. Fed. Bureau of Investigation*, 916 F.3d 1202, 1249 (9th Cir. 2019) (quoting 28 U.S.C. § 1346(b)(1)). Several statutory “exceptions” enumerated in 28 U.S.C. § 2680 limit this general waiver of immunity, barring plaintiffs from recovering tort damages in certain circumstances. If an FTCA tort claim against the United States falls within any of these exceptions, the district court lacks jurisdiction to adjudicate it. *See, e.g., DaVinci Aircraft, Inc. v. United States*, 926 F.3d 1117, 1123 (9th Cir.), *cert. denied*, 2019 WL 5301048 (Oct. 21, 2019). In the Ninth Circuit, the “plaintiff bears the burden of persuading the court that it has subject[-]matter jurisdiction under the FTCA’s general waiver of immunity,” and the United States bears the burden of proving that an exception applies. *Prescott v. United States*, 973 F.2d 696, 701-02 (9th Cir. 1992) (citing 28 U.S.C. § 1346(b)); *see C.M. v United States*, No. CV-19-05217-PHX-SRB, 2020 WL 1698191 (D. Ariz. Mar. 30, 2020).

Here, Plaintiffs should plead facts in anticipation of motions to dismiss based on: the **discretionary function exception**, 28 U.S.C. § 2680(a), the **foreign country exception**, 28 U.S.C. § 2680(k), and the **due care exception**, 28 U.S.C. § 2680(a). Less-likely grounds for a 12(b)(1) motion to dismiss—but which are still important enough to consider for the purposes of the Complaint—include the intentional tort exception, 28 U.S.C. § 2680(h).

I. The Discretionary Function Exception

The most likely argument Defendants will raise on a 12(b)(1) is that Defendant’s employees’ alleged tortious conduct is shielded by the discretionary function exception. This section explains the discretionary function exception and offers two pathways around it: violations of the Constitution, and violations of mandatory policy.

The discretionary function exception preserves sovereign immunity for acts or omissions “based upon the exercise or performance or the failure to exercise or perform a discretionary function or

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duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.” 28 U.S.C. § 2680(a). The discretionary function exception is the most commonly litigated exception to the FTCA.¹

The Supreme Court has developed a two-prong test for determining whether the discretionary function exception applies.² First, the challenged conduct must involve “an element of judgment or choice.” *Berkovitz by Berkovitz v. United States*, 486 U.S. 531, 536 (1988). The exception does not apply if a “statute, regulation, or policy specifically prescribes a course of action for an employee to follow.” *Id.* Second, the judgment must be of the kind that the exception was intended to shield. Congress included the discretionary function exception to “prevent judicial ‘second-guessing’ of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort,” so the exception applies only when the challenged action involves the “exercise of policy judgment.” *Id.* at 537.

This two-prong test is routinely applied in the Ninth Circuit’s decisions on the discretionary function exception. See, e.g., *Schurg v. United States*, 63 F.4th 826 (9th Cir. 2023) (first quoting *United States v. Gaubert*, 499 U.S. 315, 322 (1991), then quoting *Berkovitz*, 486 U.S. 531, 536 (1988)).

The Supreme Court has consistently held that the discretionary function exception is not implicated where the alleged tortious conduct violates a specific statute, regulation, or policy. See *Gaubert*, 499 U.S. 315, 322 (1991); *Berkovitz*, 486 U.S. 531, 536 (1988) (“When a suit charges an agency with failing to act in accord with a specific mandatory directive, the discretionary function exception does not apply.”); *id.* (“[T]he discretionary function will not apply when a federal statute, regulation, or policy *specifically* prescribes a course of action.”). In addition, a majority of circuit courts, including the Ninth Circuit, have held that unconstitutional conduct by a government employee necessarily fails the first prong of the discretionary function exception test. See *Nurse v. United States*, 226 F.3d 996, 1002 (9th Cir. 2000); *Loumiet v. United States*, 828 F.3d 935, 944 (D.C. Cir. 2016). Both of these “exceptions to the exception” are grounded in the notion that employees have no choice but to abide by mandatory directives, whether an agency policy, a statute, or the Constitution.

¹ Republican-appointed judges are more likely than Democrat-appointed judges (by a margin of 12.6 percent) to bar a claim based on the discretionary function exception. Robert C. Longstreth, *Does the Two-Prong Test for Determining Applicability of the Discretionary Function Exception Provide Guidance to Lower Courts Sufficient to Avoid Judicial Partisanship?*, 8 U. ST. THOMAS L.J. 398, 405-406 (2011). (reviewing FTCA cases between January 2009 and February 2011). The U.S. government has a 75 percent success rate in dismissing an FTCA claim when it invokes the discretionary function exception. Stephen L. Nelson, *The King’s Wrings and the Federal District Courts: Understanding the Discretionary Function Exemption to the Federal Tort Claims Act*, 51 S. Tex. L. Rev. 259, 260 (2009).

² This two-prong test is commonly referred to as the *Gaubert* analysis. *United States v. Gaubert*, 499 U.S. 315 (1991), is the most recent case in which the Supreme Court interpreted the discretionary function exception.

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The federal government bears the burden of proving that the discretionary function applies. *GATX/Airlog Co. v. United States*, 286 F.3d 1168, 1174 (9th Cir.2002). “All of the factual allegations in the plaintiff’s complaint are to be taken as true in reviewing a discretionary function exception dismissal under the FTCA.” *O’Toole v. United States*, 295 F.3d 1029, 1032 (9th Cir.2002). The court “must assume the truth of the allegations in the Complaint unless they are ‘controverted by undisputed facts in the record.’” *J.A.M. v. United States*, No. 22-CV-0380-GPC-BGS, 2022 WL 2873172 (S.D. Cal. July 21, 2022) (quoting *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987)). Where “the facts necessary to decide whether the discretionary function exception of the FTCA bars Plaintiffs claims remain in dispute,” the exception does not preserve immunity for the United States. *J.A.M. v. United States*, No. 22-CV-0380-GPC-BGS, 2022 WL 2873172 (S.D. Cal. July 21, 2022).

In this litigation, we will argue that the discretionary function does not apply because the tortious conduct of the federal employees who separated Plaintiffs falls under both of these exceptions: violations of the Constitution, and violations of mandatory policy.

As we anticipate a potential motion to dismiss, we can benefit from a review of previous migrant family separation FTCA cases. To date, the U.S. government has argued for the application of the discretionary function exception in each of the FTCA family separation cases in this circuit. *See, e.g., A.P.F. v. United States*, 492 F. Supp. 3d 989, 996–97 (D. Ariz. 2020); *C.M. v. United States*, No. CV-19-05217-PHX-SRB, 2020 WL 1698191, at *4 (D. Ariz. Mar. 30, 2020); *Nunez Euceda*, 2021 WL 4895748, at *3; *A.I.I.L. v. Sessions*, No. CV-19-00481-TUC-JCH, 2022 WL 992543 (D. Ariz. Mar. 31, 2022); *Wilbur P.G. v. United States*, No. 4:21-CV-04457-KAW, 2022 WL 3024319 (N.D. Cal. May 10, 2022); *Fuentes-Ortega v. United States*, 2022 WL 16924223, at *1 (D. Ariz. Nov. 4, 2022). Notably, these cases all involve families separated under the pretext of the Trump Administration’s Zero Tolerance Policy from 2017 to 2018 (unlike Plaintiffs, who were separated after the end of the Zero Tolerance Policy). In each of the cases, the discretionary function exception was held to not apply. One of the lines of reasoning in reaching that conclusion was that the government failed to meet the first prong of the discretionary function test in part because the Zero-Tolerance Policy was a policy prescribed by the Trump Administration, so the front-line employees tasked with implementing the policy did not reasonably have any element of choice. *See Wilbur P.G.*, 2022 WL 3024319, at *4. Because Plaintiffs’ separation did not occur under the purview of the Zero-Tolerance Policy, this argument will not be available to Plaintiffs.

Some judges choose to analyze the discretionary function exception on a tort-by-tort basis. *See, e.g., Xue Lu v. Powell*, No. CV 01-1758 CBM (EX), 2002 WL 35644910 (C.D. Cal. July 3, 2002), *aff’d*, 621 F.3d 944 (9th Cir. 2010); *Ard v. F.D.I.C.*, 770 F. Supp. 2d 1029 (C.D. Cal. 2011) (separately analyzing whether the exception applies to the plaintiffs’ negligent conduct claim and negligent supervision claim). This has at least two implications for our litigation. First, when

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choosing which torts allege, Plaintiffs’ team should check to confirm that each of them stems from an act that is a violation of a mandatory regulation or statute, a violation of the Constitution, or both. Second, when choosing which violations of regulations/statutes apply to the government conduct in question, we should understand that not all of our torts will necessarily survive the discretionary function exception as the result of the same violation—the violating act (of a policy, statute, or the Constitution) should be the same act as the tortious act.

a. Constitutional Violation

Because “governmental conduct cannot be discretionary if it violates a legal mandate,” *Nurse*, 226 F.3d at 1003 (9th Cir. 2000), the acts of government employees that offend the Constitution are not protected by the discretionary function exception.³ In this litigation, we will argue that the discretionary function exception should not apply because the government employees violated Plaintiffs’ Fifth Amendment rights in separating them on October 13, 2020.

The leading case in the Ninth Circuit is *Nurse v. United States*, 226 F.3d 996 (9th Cir. 2000). In *Nurse*, the plaintiff was detained and searched by United States Customs Service agents at domestic and foreign airports. *Id.* at 999. The complaint alleged that “these officials ‘established, promulgated and enforced rules, regulations, policies, directives, guidelines, and practices which they knew, or should have known, were unlawful and discriminatory and would result in the false arrests and detentions and unlawful searches of persons, particularly persons of color, traveling to and from the United States.’” *Id.* at 1000. Despite the protection under the FTCA for the promulgation of policies and rules, the court held that the plaintiff’s complaint “alleges that the policy-making defendants promulgated discriminatory, unconstitutional policies which they had no discretion to create.” *Id.* at 1002. The court noted that the government’s conduct cannot be protected under the discretionary function exception if the conduct is in violation of a legal mandate. *Id.* The court thus reversed the district court’s dismissal of the FTCA claims. *Id.*

³ There is a circuit split on whether constitutional violations by government employees are protected by the discretionary function exception. The First, Eighth, Ninth, and D.C. Circuits have held that unconstitutional conduct necessarily falls outside of the discretionary function exception. Several other Courts of Appeals have suggested as much in dicta. Only the Seventh Circuit, in 2019, and the Eleventh Circuit, in 2021, have taken the position that the discretionary function exception covers conduct that violates the Constitution. *See Loumiet v. United States*, 828 F.3d 935 (D.C. Cir. 2016).

A brief point of clarification: The exception to the discretionary function exception for constitutional violations is not an exception for constitutional torts. Constitutional tort claims are actionable only against individual officials under *Bivens*, and the United States did not render itself liable to such claims under the FTCA. In the words of the D.C. Circuit:

“The state-law substance of an FTCA claim is unchanged by courts’ recognition of constitutional bounds to the legitimate discretion that the FTCA immunizes. . . . A plaintiff who identifies constitutional defects in the conduct underlying her FTCA tort claim—whether or not she advances a *Bivens* claim against the individual official involved—may affect the availability of the discretionary-function defense, but she does not thereby convert an FTCA claim into a constitutional damages claim against the government; state law is necessarily still the source of the substantive standard of FTCA liability.” *Loumiet*, 828 F.3d 935, 945-46 (D.C. Cir. 2016).

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Here, we will argue that like the plaintiff in *Nurse*, Plaintiffs have successfully stated a claim that is not barred by the discretionary function exception because the DHS agents’ alleged conduct violated the Constitution – specifically, the due process protections of the Fifth and Fourteenth Amendments.

The standard for how specific must a Constitutional violation be pled to avoid the discretionary function exception is not totally clear in the case law. The takeaway for our litigation is that the more specifically we can plead facts that meet the standard of a due process violation, the more likely we will be to avoid the discretionary function exception. The Ninth Circuit noted in *Nurse* that, in finding that the discretionary function exception was limited by the Constitution, they did “not make any decision regarding the level of specificity with which a constitutional proscription must be articulated in order to remove the discretion of a federal actor. We hold only that the Constitution can limit the discretion of federal officials such that the FTCA’s discretionary function exception will not apply.” 226 F.3d at 1002, n. 2 (9th Cir. 2000). Some district courts have since held the standard to be that the discretionary function exception does not bar plaintiffs when their complaint “states a plausible constitutional violation under *Iqbal* and *Twombly*.” *Nunez Euceda v. United States*, No. 220CV10793VAPGJSX, 2021 WL 4895748 (C.D. Cal. Apr. 27, 2021).

If Plaintiffs successfully allege a plausible claim for a constitutional violation, then every tort Plaintiffs plead will avoid the discretionary function exception so long as they all “stem from” the separation. *A.P.F. v. United States*, 492 F. Supp. 3d 989, 996 (D. Ariz. 2020). In Plaintiffs’ litigation strategy, the “constitutional violation” argument thus has a potential advantage over the “violation of policy/statute” argument, *infra* at part I.b. As noted above, each tort in the FTCA claim should have a nexus with (or “stem from”) a non-discretionary mandate. When alleging individual policy violations (e.g. not properly documenting the events of Plaintiffs’ separation in DHS data management systems), each violation might not necessarily cover every tort and might call for a tort-by-tort analysis by the court. But where Plaintiffs successfully allege a constitutional violation at the moment of separation, all (or nearly all) of our alleged torts will not be shielded by the discretionary function exception because they all (or nearly all) arise out of the separation.

The Supreme Court has consistently recognized the importance of family unit integrity and the rights of parents to care for their children. *See, e.g., Santosky v. Kramer*, 455 U.S. 745 767 (1982) (noting that a state “registers no gain toward its declared goals when it separates children from the custody of fit parents”) (quoting *Stanley v. Illinois*, 405 U.S. 645, 652 (1972)). In particular, the Court has declared that the Due Process Clause of the Fourteenth Amendment “protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57, 66 (2000). The fundamental right to care for one’s own child is “perhaps the oldest of the fundamental liberty interests recognized by [the] Court.” *Id.* at 65. Undocumented immigrants enjoy this fundamental right to the same extent as citizen

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parents or lawful immigrant parents. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

As we build an argument for a violation of the constitution to avert the discretionary function exception, it is again useful to look back to past FTCA family separation cases. One analogous case from the Zero Tolerance Policy era is *C.M. v. United States*, No. CV-19-05217-PHX-SRB, 2020 WL 1698191 (D. Ariz. Mar. 30, 2020). The court in *C.M.*, noting the rule from *Nurse*, found a constitutional violation to be present by analogizing the alleged facts of *C.M.* to those of another case, *Ms. L. v. U.S. Immigration and Customs Enft (“ICE”)*, 310 F. Supp. 3d 1133, 1144–46 (S.D. Cal. 2018). There, the court found that the government’s practice of separating families, and the procedures used to implement this practice, likely violated the parents’ due process rights and enjoined the government’s Zero-Tolerance Policy. *Ms. L. v. ICE*, 310 F. Supp. 3d 1133, 1144–46 (S.D. Cal. 2018).⁴ The government in *C.M.* argued that “Plaintiffs cannot . . . circumvent the discretionary function exception simply by labeling governmental conduct as unconstitutional.” *C.M.*, 2020 WL 1698191 at *4. The court in *C.M.*, however, found that the plaintiffs “did more than ‘simply label[]’ the government’s conduct as unconstitutional—they cited [the *Ms. L.*] court order declaring this conduct so ‘egregious,’ ‘outrageous,’ ‘brutal,’ and ‘offensive’ that it warranted immediate enjoinder,” and thus concluded that “Plaintiffs have plausibly alleged that the government’s separation of their families violated their constitutional rights.” *Id.* (citations omitted).

Another analogous FTCA family separation case from the Zero-Tolerance Policy era is *A.P.F. v. United States*, 492 F. Supp. 3d 989 (D. Ariz. 2020), which similarly pointed to a Fifth Amendment due process violation, citing *Nurse* and *Ms. L.* In *A.P.F.*, the court explained the logic as follows: “Because government officials lack discretion to violate the Constitution, the discretionary function exception cannot shield conduct related to the government’s likely unconstitutional separation of plaintiffs. . . . Because each of [p]laintiffs’ causes of action stem from this separation, none are barred by the discretionary function exception.” *Id.* at 996.

Plaintiffs in the present case can follow the same logic as the courts did in *C.M.* in *A.P.F.*, first by establishing the rule in *Nurse*, then analogizing the facts of *Ms. L.*, and then arguing that the torts stem from the unconstitutional conduct.

Analogizing the facts of *Ms. L.* requires a closer examination of that case. In *Ms. L. v. ICE*, migrant parents brought a class action⁵ against the Department of Homeland Security (DHS) and its sub-

⁴ Note that IRC team has been in touch with some of the ACLU IRP team that litigated the *Ms. L.* case – see notes in Clio.

⁵ The class in *Ms. L.* is defined to include: “All adult parents who enter the United States at or between designated ports of entry who (1) have been, are, or will be detained in immigration custody by the [DHS], and (2) have a minor child who is or will be separated from them by DHS and detained in ORR custody, ORR foster care, or DHS

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agencies Immigration and Customs Enforcement (ICE) and CBP, among other federal government defendants, alleging that the agency’s practice of separating parents and children held in immigration detention without a showing that the parent was unfit or presented a danger to the minor child violated their due process rights. *Ms. L v. ICE*, 302 F. Supp. 3d 1149, 1154-56 (S.D. Cal. 2018). In a June 2018 Order, the district court found that the parents “alleged sufficient facts and a cognizable legal theory” giving rise to a plausible claim that ICE’s practice of family separation violated their due process rights. *Id.* at 1162-65. On that basis, the court granted a preliminary injunction of the government’s practice of family separations. *Ms. L v. ICE*, 310 F. Supp. 3d 1133, 1149 (S.D. Cal. 2018). After this injunction, however, family separations continued to occur, including based on government claims of false parent-child relationships that were later revealed to be valid by DNA tests (not unlike the facts of the present case). *Ms. L v. ICE*, 415 F. Supp. 3d 980, 989 (S.D. Cal. 2020). In January 2020, the court issued an order requiring the defendants to conduct DNA testing before separating a migrant adult from a child based on parentage concerns. *Id.* at 989-90.

In this litigation, then, Plaintiffs must allege that the separation was a likely due process violation. We can approach this with two arguments, both analogizing to *Ms. L*: **First, we will argue the separation was unconstitutional because it specifically did not follow the Ms. L 2020 court order that mandated DHS use DNA testing before separating migrant families based on concerns of validity of parentage. Second, we will argue that the separation was unconstitutional on its own terms, aside from the specific failure to follow the 2020 court order, because the circumstances of the separation meet the “shock the conscience” standard.**

i. Particular Due Process Violation in Failure to DNA Test

First, pursuant to the January 2020 court order, we will argue that DHS’s failure to conduct a DNA test during their separation of Ms. R.H. (the mother of Plaintiffs’ family) from her sons violated Ms. R.H. and her sons’ due process rights.⁶ The January 2020 court order did not simply order DHS to use DNA tests prior to separation in these circumstances—it did so specifically to protect the constitutional due process rights at stake. The court held that the U.S. government defendants’ failure to provide DNA testing was not “consistent” with the plaintiff migrant parents’ fundamental

custody absent a determination that the parent is unfit or presents a danger to the child.” *Ms. L v. ICE*, 415 F. Supp. 3d 980, 989 (S.D. Cal. 2020). More investigation should be conducted to determine whether Ms. R.H., the mother of Plaintiffs’ family, is a *Ms. L* class member – it appears she might be, since she was “detained” in the USBP van that took her to the border and had her sons separated from her. Our co-counsel at ILD, however, believe that Ms. R.H. is not a *Ms. L* class member.

⁶ Note that the *Ms. L* court only made a decision about the due process rights of migrant *parents*, not migrant *children*, because the plaintiffs were only parents. We will argue that the due process rights of both parent and children were violated in this case. For background on the family integrity due process rights of children, see Rachel Kennedy, A Child’s Constitutional Right to Family Integrity and Counsel in Dependency Proceedings, 72 EMORY L. J. 911, 917-32 (2023).

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“right to family integrity.” The court’s analysis was particular to the circumstances: “Given the right at issue here, the harm that parents and children suffer when they are separated, and the undisputed speed, accuracy and availability of DNA testing, the [c]ourt finds [d]efendants *must* conduct DNA testing before separating an adult from a child based on parentage concerns. Such testing, *in service* to the fundamental right at issue, is clearly warranted.”⁷ *Id.* at 990 (emphasis added). The agents who conducted the separation were bound by the Constitution, including the Due Process Clause and the Supreme Court’s interpretations of its text. The January 2020 *Ms. L* court order’s application of this constitutional law treated a set of near-identical (if not identical, *see supra* note 5) circumstances found the failure to be inconsistent with migrant parents’ due process rights. By citing to this court order and alleging that the circumstances are nearly identical, Plaintiffs can successfully meet the *Iqbal* plausibility standard.

This constitutional violation has a nexus with nearly all of our alleged torts. But for Defendants’ failure to conduct the DNA tests, which would have reliably shown Ms. R.H to be the mother of her sons, the separation would not have occurred and Plaintiffs would not have suffered the harms stemming from the separation.

2. General Due Process Violation in the Separation

In addition to the particular violation of Plaintiffs’ due process rights by way of the Defendants’ failure to conduct a DNA test, the circumstances of the separation more generally constituted a substantive due process violation. To determine whether the plaintiffs in that case alleged a plausible due process violation, the court in *Ms. L* in June 2018 investigated “(1) whether the substantive due process right to family integrity applies not to [p]laintiffs, generally, but in the particular circumstances alleged; and (2) if so, whether the conduct attributed to the Government violates that right.” *Ms. L v. ICE*, 302 F. Supp. 3d at 1161-62.

First, as in *Ms. L*, the substantive due process right to family integrity applied in the particular circumstances of Plaintiffs’ separation by the government.

To make this argument, we must examine the reasoning of how the *Ms. L* court found that the right to family integrity applied in those circumstances. The *Ms. L* court concluded that the right to family integrity applied in large part by distinguishing the case from a similar one where those same rights did not apply. The *Ms. L* court’s primary point of comparison was *Aguilar v. ICE*, 510 F.3d 1 (1st Cir. 2007) The *Ms. L* court distinguished the alleged facts of the class representatives (migrant parents separated from their children after entering the United States) from the alleged circumstances of *Aguilar*, where a federal court found that due process did *not* apply in the alleged circumstances. In *Aguilar*, ICE agents conducted a raid on the plaintiffs workplace, which resulted in nearly 300 employees being detained and 200 of them being transferred from a detention facility

⁷ *Id.* at 990 (emphasis added).

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in Massachusetts, where the raid took place, to a facility in Texas for removal. *Id.* at 6. Because of the surprise nature of the raid many of the plaintiffs’ children were left unattended for various periods of time, and the plaintiffs alleged that their detention “wreaked havoc with their right to make decisions about the care, custody, and control of their minor children.” *Id.* at 22 The court in *Aguilar* concluded that the plaintiffs did not demonstrate that the substantive due process right to family integrity “encompasse[d]” their claims. *Id.* at 23-24.

Just as the court in *Ms. L* distinguished the alleged facts of the migrant parents’ separation from the separations in *Aguilar*, so too can Plaintiffs distinguish their own allegations. Unlike the plaintiffs in *Aguilar*, Ms. R.H. was not charged with a crime. Unlike the plaintiffs in *Aguilar*, who appear to have been detained at the worksite while their children were elsewhere in the community, Ms. R.H. was held in DHS custody *with her children* when they were separated. In *Aguilar*, ICE “attempted to coordinate with social services agencies to assure the adequate care of dependent children[,] . . . took affirmative steps before and after the raid to attend to family needs[,] . . . [and] immediately released thirty-five persons who had been apprehended due to ‘pressing humanitarian needs’ (such as being the sole caregiver of one or more minor children).” 510 F.3d at 22 n.5 (citing findings of the district court). Here, DHS employees took no such mitigation measures to address “humanitarian needs”—in fact, their various failures and shortcomings to provide proper processing and documentation of the incident exacerbated the humanitarian needs of Plaintiffs.

Another way the *Ms. L* court concluded in June 2018 that the right to family integrity applied was by considering the plaintiffs’ asylum-seeking status. *Ms. L v. ICE*, 302 F. Supp. 3d at 1164-65. Not all *Ms. L* class members were asylum seekers, but both class representatives were, and the fact “that each of the named [p]laintiffs is seeking asylum is important to the due process analysis.” *Id.* at 1164 The same is true in Plaintiffs case: Ms. R.H. and her sons were all seeking safety and asylum together in the United States. In the words of the *Ms. L* court, “[a]rriving on United States soil with one’s minor child to pursue relief extended by U.S. law—as well as international law to which the United States has acceded—calls out for careful assessment of how governmental actors treat such people and whether constitutional protections should apply.” *Id.* at 1164

Second, as in *Ms. L*, the government’s conduct violated the substantive due process right to family integrity that applied to Plaintiffs’ circumstances.

Again, it is useful to start with an examination of the *Ms. L* court’s analysis on this point. For substantive due process violations arising from “executive” actions,⁸ the conduct at issue will not be constitutionally cognizable at all unless it can be said to “shock the judicial conscience.” *County of Sacramento v. Lewis*, 523 U.S. 833, 846–47 (1998). Moreover, “the substantive component of

⁸ The Supreme Court distinguishes between substantive due process violations involving “executive” and “legislative” actions. The Court evaluates whether legislative acts violate the substantive Due Process Clause using a test from the case *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). A different test from *Rochin v. California*, 342 U.S. 165, 172 (1952) applies to violations perpetrated by executive officials.

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the Due Process Clause is violated by executive action only when it ‘can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense.’” *Lewis*, 523 U.S. at 847 (citation omitted).

The court in *Ms. L* applied this “shocks the conscience” standard to determine whether the migrant parents had alleged sufficient facts to state a plausible claim for violation of their due process rights, and concluded that they did. The court pointed to the “wrenching” nature of the separation, during which children were “screaming, crying, and pleading” to not be taken away from their parents. *Ms. L v. ICE*, 302 F. Supp. 3d at 1166. The court highlighted the facts that the separations were “arbitrary” and served “no legitimate purpose,” and that the government agents “responsible for the ‘care and custody’ of migrant children ha[d], in fact, become their persecutors.” *Id.* at 1166-67. In addition, the court pointed to the fact that the plaintiffs had arrived in the United States seeking safety and shelter from persecution in their home countries. *Id.* Importantly, plaintiffs described “government conduct that arbitrarily tears at the sacred bond between parent and child, and is emblematic of the ‘exercise of power without any reasonable justification in the service of an otherwise legitimate governmental objective[.]’” *Id.* at 1167, (quoting *Lewis*, 523 U.S. at 846).

The same “shocking” circumstances occurred in the present case. Plaintiffs’ separation was a wrenching, tearful encounter. Her sons clung to her as she was physically torn from their arms. The officers’ accusations of presenting as a false family unit were baseless and derogatory, and the separation served no legitimate governmental purpose or objective. As in *Ms. L*, the government actors responsible for “care and custody” of migrant children, and those responsible for receiving those seeking safety and asylum, become Plaintiffs’ persecutors.

The “shock” in the present case, however, goes beyond that in *Ms. L*. Defendants engaging abject, degrading behavior toward Ms. R.H. during the separation, humiliating her for not speaking English and calling her a “piece of shit.” Unlike the events in the 2018 *Ms. L* order, the officers in the present case were bound by the court order to conduct a DNA test, and they were even specifically asked for such a test by Plaintiffs. Finally, the officers in the present case broke a wide range of their own agency’s rules and policies when separating the Plaintiffs. *See infra* part I.b.

As a result, the alleged facts of this case clearly meet the “shock the conscience” standard. Because of this, Plaintiffs can allege in their complaint that the entire separation was likely unconstitutional. Because of this, all torts Plaintiffs choose to plead that arise out of the separation will not be shielded by the discretionary function exception.

b. Violations of Mandatory Policy

[In the following sections, this memo goes on to outline more counterarguments to the discretionary function exception as well as other FTCA statutory exceptions relevant to the case.]

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 JD/LLB From **University of Houston Law Center**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=74402&yr=2009
 Date of JD/LLB **May 15, 2024**
 Class Rank **50%**
 Law Review/Journal **Yes**
 Journal(s) **Houston Journal of International Law**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Moot Court Team**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Professional Organization

Organizations **Just the Beginning Organization**

Recommenders

Swift, Kenneth
krswift@central.uh.edu
+17137438424

Brem, Katherine
kbrem@central.uh.edu
(713) 743-5945

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Emily Landry
75 W. Sandalbranch Circle
The Woodlands, Texas 77382

June 12, 2023

The Honorable Juan R. Sánchez, Chief Judge
U.S. District Court for the Eastern District of Pennsylvania
14613 U.S. Courthouse - Courtroom 14-B
601 Market Street
Philadelphia, PA 19106

Dear Judge Sánchez:

I am a third-year law student at the University of Houston Law Center, and I am writing to apply for the 2024-2025 clerkship with your chambers. I was encouraged to apply for this position because of your preference for applicants like myself who are interested in public service after graduation.

As a part-time law student, I have financed my legal education by working at small and mid-size law firms in civil litigation practice groups. Over several years of working as a paralegal and then law clerk, I have gained experience in performing legal research and drafting memoranda, motions, and discovery requests/responses. I further developed these skills through my internship with the Harris County Attorney's Office, where I analyzed federal, state, and local statutes to determine the permissibility of the hospital division's proposed programs. Additionally, this summer I will be completing a judicial externship with the Honorable Jeff Brown, U.S. District Judge for the Southern District of Texas, Galveston Division, where I will have the opportunity to further refine my legal research and writing competencies.

In law school, I have been intentional in maximizing opportunities to develop my legal writing skills. Prior to serving as a Publications Editor of the *Houston Journal of International Law*, I was awarded the Best Comment on U.S.-Mexico Relations for my candidate comment on how illegal arms trafficking perpetuates the drug war. I was also a brief writer on the moot court team.

While I am grateful for the experience I have gained by working for a private practice, my career ambitions as a lawyer are best suited for a government setting, where the public interest defines the mission. My long-term goal is to work as an Assistant U.S. Attorney representing the U.S. government. I believe this clerkship would provide an invaluable foundation for my desired career path, as well as an opportunity for me to meaningfully contribute to your chambers.

My resume, unofficial transcript, recommendations, and writing sample have been uploaded to OSCAR for your review.

Respectfully,

Emily Landry

Enclosures

Emily L. Landry

The Woodlands, Texas | (832) 326-1674 | ellandry@cougarnet.uh.edu

EDUCATION

University of Houston Law Center, Houston, Texas

May 2024

Juris Doctor Candidate, GPA: 3.463, Top 40%

Honors: *Houston Journal of International Law*, 2022 Award for Best Comment on U.S.-Mexico Relations, Dean's List Fall 2020 and Spring 2023

Activities: Moot Court, Christian Legal Society, Houston Young Lawyers Association; Hispanic Bar Association of Houston; Mexican-American Bar Association; Latinx Law Students Association

University of Texas at San Antonio (UTSA), San Antonio, Texas

May 2019

Master of Arts in Teaching English to Speakers of Other Languages (Honors), GPA: 4.00

The University of Manchester, Manchester, United Kingdom

July 2010

Bachelor of Science in Psychology, GPA: 3.44

EXPERIENCE

Thomas M. Fountain & Associates, PLLC, Houston, Texas

January 2023 - Present

Law Clerk

- Review insurance claims files to develop defense strategy for clients
- Attend examinations under oath
- Draft pleadings and motions for filing in both state and federal courts
- Prepare discovery requests and responses
- Analyze legal research to incorporate into interoffice memoranda
- Review and respond to Deceptive Trade Practices Act demand letters

Harris County Attorney's Office, Houston, Texas

January 2022 – April 2022

Legal Intern, Hospital Division

- Regularly analyzed Stark law, Anti-Kickback Statute, and Fraud and Abuse laws
- Reviewed hospital district policies and ensured proper citation of legal authorities
- Drafted memorandums on issues relating to hospital district operations and proposed programs
- Researched and analyzed Texas Attorney General opinions

Stibbs & Co. P.C., Houston, Texas

May 2019 – January 2023

Paralegal/Law Clerk (Transactional & Litigation)

- Prepared and filed formation documents of corporate entities in various jurisdictions
- Reviewed due diligence items and prepared disclosure schedules for acquisitions
- Drafted purchase agreements, bills of sales, and warranty deeds
- Conducted legal research using Westlaw and Lexis
- Drafted motions, pleadings, and memorandums for attorney review
- Conducted document review for responsiveness to discovery requests

Haynes Boone, LLP, San Antonio, Texas

October 2017- January 2019

Administrative Coordinator

- Assisted office manager with planning and organizing firm events
- Managed conference room reservations and firm calendar
- Prepared and submitted expense reports

SKILLS AND INTERESTS

- Advanced fluency in Spanish
- Active mentor in Big Brothers Big Sisters organization

Unofficial Transcript

Name: Emily L Landry
Student ID: 2026829

Print Date: 05/19/2023

SSN: XXX-XX-7858
Birthdate: XXXX-06-26

Request Reason: Web Transcript Request

Beginning of Law Record

FA 2020

Program: Law Professional
Plan: Law, JD Major

Course		Description	Attempted	Earned	Grade	Points
LAW	5314	Lawyering Skills & Strategy I	3.000	3.000	B+	9.990
Instructor:		Derrick Earl Gabriel				
		Lauren J Simpson				
LAW	5406	Civil Procedure	4.000	4.000	A	16.000
Instructor:		Derrick Earl Gabriel				
		Lonny Hoffman				
LAW	5408	Property	4.000	4.000	A	16.000
Instructor:		Derrick Earl Gabriel				
		Kellen B Zale				

Term GPA	3.817	Term Totals	Attempted 11.000	Earned 11.000	GPA Units 11.000	Points 41.990
Term Honor:	Dean's List					

SP 2021

Program: Law Professional
Plan: Law, JD Major

Course		Description	Attempted	Earned	Grade	Points
LAW	5409	Contracts	4.000	4.000	B+	13.320
Instructor:		Derrick Earl Gabriel				
		Anthony Ray Chase				
LAW	5418	Torts	4.000	4.000	B-	10.680
Instructor:		Derrick Earl Gabriel				
		Valerie Gutmann Koch				
LAW	6207	Lawyering Skills & Strategy II	2.000	2.000	B+	6.660
Instructor:		Derrick Earl Gabriel				
		Lauren J Simpson				

Term GPA	3.066	Term Totals	Attempted 10.000	Earned 10.000	GPA Units 10.000	Points 30.660
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SU 2021

Program: Law Professional
Plan: Law, JD Major

Course		Description	Attempted	Earned	Grade	Points
LAW	5303	Criminal Law	3.000	3.000	B+	9.990
Instructor:		Derrick Earl Gabriel				
		Zachary Daniel Kaufman				
LAW	5378	Statutory Interpretation & Rea	3.000	3.000	B+	9.990
Instructor:		Derrick Earl Gabriel				
		Darren Bush				

Term GPA	3.330	Term Totals	Attempted 6.000	Earned 6.000	GPA Units 6.000	Points 19.980
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Unofficial Transcript

Name: Emily L Landry
Student ID: 2026829

FA 2021

Program:		Law Professional				
Plan:		Law, JD Major				
<u>Course</u>		<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
LAW	5339	Trusts and Wills	3.000	3.000	C+	6.990
Instructor:		Derrick Earl Gabriel Gus Gerard Tamborello				
LAW	5488	Constitutional Law	4.000	4.000	A-	14.680
Instructor:		Derrick Earl Gabriel Renee N Knake				
Term GPA	3.096	Term Totals	<u>Attempted</u> 7.000	<u>Earned</u> 7.000	<u>GPA Units</u> 7.000	<u>Points</u> 21.670

SP 2022

Program:		Law Professional				
Plan:		Law, JD Major				
<u>Course</u>		<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
LAW	5333	Health Transactions	3.000	3.000	B+	9.990
Instructor:		Derrick Earl Gabriel Robert Francis McStay Jessica Mantel Warren Christopher Shea				
LAW	5357	Evidence	3.000	3.000	A	12.000
Instructor:		Derrick Earl Gabriel Katherine B Brem				
Term GPA	3.665	Term Totals	<u>Attempted</u> 6.000	<u>Earned</u> 6.000	<u>GPA Units</u> 6.000	<u>Points</u> 21.990

SU 2022

Program:		Law Professional				
Plan:		Law, JD Major				
<u>Course</u>		<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
LAW	5197	Selected Topics	1.000	1.000	S	0.000
Course Topic:		Advocacy Competition TWO				
Instructor:		Jim E Lawrence Derrick Earl Gabriel				
LAW	5297	Selected Topics	2.000	2.000	B+	6.660
Course Topic:		Current Crisis Middle East				
Instructor:		Derrick Earl Gabriel Samir Jabra Foteh				
LAW	6321	Professional Responsibility	3.000	3.000	A	12.000
Instructor:		Derrick Earl Gabriel Meredith J Duncan				
Term GPA	3.732	Term Totals	<u>Attempted</u> 6.000	<u>Earned</u> 6.000	<u>GPA Units</u> 5.000	<u>Points</u> 18.660

FA 2022

Program:
Plan:

Law Professional
Law, JD Major

Unofficial Transcript

Name: Emily L Landry
Student ID: 2026829

Course		Description	Attempted	Earned	Grade	Points
LAW	5421	Business Organizations	4.000	4.000	B+	13.320
Instructor:		Douglas Keith Moll Derrick Earl Gabriel				
LAW	6365	U.S. Health System: An Intro	3.000	3.000	B+	9.990
Instructor:		Derrick Earl Gabriel Jessica Mantel				
Term GPA	3.330	Term Totals	Attempted 7.000	Earned 7.000	GPA Units 7.000	Points 23.310

SP 2023

Program: Law Professional
Plan: Law, JD Major

Course		Description	Attempted	Earned	Grade	Points
LAW	5343	Employment Law	3.000	3.000	A	12.000
Instructor:		Derrick Earl Gabriel Shahriar Daram				
LAW	5392	Int Business Trans	3.000	3.000	B+	9.990
Instructor:		Kenneth Richard Swift Derrick Earl Gabriel Samir Jabra Foteh Shahriar Daram				
LAW	7317	WRC: Federal Pretrial Drafting	3.000	3.000	A-	11.010
Instructor:		Derrick Earl Gabriel Katherine B Brem Shahriar Daram				
Term GPA	3.667	Term Totals	Attempted 9.000	Earned 9.000	GPA Units 9.000	Points 33.000

SU 2023

Program: Law Professional
Plan: Law, JD Major

Course		Description	Attempted	Earned	Grade	Points
LAW	5129	Advocacy Competition THREE	1.000	0.000	In Progress	0.000
Instructor:		Jim E Lawrence Derrick Earl Gabriel				
LAW	5130	Advocacy Competition TWO	1.000	0.000	In Progress	0.000
Instructor:		Jim E Lawrence Derrick Earl Gabriel				
LAW	5200	Depositions	2.000	0.000	In Progress	0.000
Instructor:		Derrick Earl Gabriel Willie Daw Jennifer Chung				
LAW	5328	Penn Christopher Huston Judicial Externship I	3.000	0.000	In Progress	0.000
Instructor:		Derrick Earl Gabriel William Powers Kristina G Van Arsdell Carey Ann Worrell Anna M Archer				
Term GPA	0.000	Term Totals	Attempted 7.000	Earned 0.000	GPA Units 0.000	Points 0.000

FA 2023

Program: Law Professional
Plan: Law, JD Major

Unofficial Transcript

Name: Emily L Landry
Student ID: 2026829

<u>Course</u>		<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
LAW	5326	Criminal Procedure	3.000	0.000	In Progress	0.000
Instructor:		Derrick Earl Gabriel Timothy Shawn Braley				
LAW	5397	Selected Topics	3.000	0.000	In Progress	0.000
Course Topic:		Adv Drafting Corp Transactions				
Instructor:		Derrick Earl Gabriel Richard Allen Ginsburg				
Term GPA	0.000	Term Totals	<u>Attempted</u> 6.000	<u>Earned</u> 0.000	<u>GPA Units</u> 0.000	<u>Points</u> 0.000
Law Career Totals						
Cum GPA:	3.463	Cum Totals	75.000	62.000	61.000	211.260

End of Unofficial Transcript

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

It is with great pleasure that I write to recommend Emily Landry for a clerkship with the court. Ms. Landry is highly intelligent, and an excellent writer and I am certain she would be an outstanding clerk.

I am a Clinical Professor at the University of Houston Law Center and have been a law professor for 25 years. Ms. Landry was a student in my Employment Law course in the spring of 2023. She received an A and the highest score in the course. In fact, Ms. Landry achieved one of the highest grades on my exam in the 15 years I have been teaching the course.

The Employment Law course is unique in that there is a considerable amount of writing, with students required to submit 30-40 short answer essay responses to various types of hypotheticals and several longform essays. Ms. Landry excelled on these questions and provided responses with an in-depth treatment of the law and facts. Further, she routinely went above and beyond what was required for credit and examined the political and societal impact of the law or a proposed change in the law. Through her responses, Ms. Landry demonstrated both outstanding written legal communication skills and the intellectual capability for deep legal analysis.

Again, it is without hesitation that I recommend Emily Landry for this position. Please contact me if you need anything further.

Sincerely,
/S/
Kenneth R. Swift

Kenneth Swift - krs swift@central.uh.edu - +17137438424

University of Houston Law Center

4170 Martin Luther King Blvd., Room 341M
Houston, Texas 77204-6060

June 13, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing to enthusiastically recommend Emily Landry for a judicial clerkship. I have taught Emily in both Evidence and an upper-level writing course called Federal Pretrial Drafting. In each instance I have witnessed Emily's exceptional critical thinking skills, her dedication to identifying even the most obscure legal issues, her inspiring work ethic, and her friendly demeanor. She will make an outstanding addition to your chambers.

From the outset, in Evidence class, it was evident that Emily possessed a rare combination of intellectual acuity and analytical prowess. She asked thoughtful and inciteful questions. And when others were stumped by the hypothetical of the day, I knew I could count on Emily to pull them across the proverbial Socratic finish line. She has a way about her that is unassuming, yet Emily was always well-prepared and willing to answer a series of questions that imparted the necessary information to the class in a manner they could understand.

Emily continued this trend in Federal Pretrial Drafting. In this class, we follow one diversity case through the litigation process. Students begin by drafting pleadings. They then draft discovery requests and responses, evidentiary motions, a motion for summary judgment and accompanying reply, and a mediation memorandum. The class is fast-paced and requires attention to detail. Emily excelled. Throughout, she demonstrated a remarkable aptitude for critical thinking and legal reasoning, and her writing reflected this. She dissected complex legal issues and presented cogent arguments with clarity and precision, and her legal citation was spot on.

Further, one of the most commendable aspects of Emily's character is her indefatigable work ethic. She approaches every task with dedication and an unrelenting pursuit of perfection. Emily consistently went above and beyond the requirements of each course I taught, investing hours in meticulous preparation and painstakingly reviewing every detail to ensure the highest quality work product. This level of commitment, coupled with her exceptional time management skills, allowed her to consistently deliver assignments of the highest caliber.

Throughout our interactions, I have also come to admire Emily's collaborative spirit and her ability to work effectively in teams. Her classmates both like and respect her and I found her to be a reliable ally in class, even when teaching the most complicated of concepts.

For all of these reasons I wholeheartedly recommend Emily for a judicial clerkship. She demonstrates outstanding critical thinking skills and exceptional work ethic, and Emily's writing style is concise, articulate, and exhibits a level of maturity well beyond her years. I am confident that she will excel in any tasks assigned to her and make valuable contributions to the Court.

If you require any additional information or wish to discuss Emily's aptitude for this clerkship, please do not hesitate to contact me by email at kbrem@uh.edu, or by telephone at 713.743.5945.

Very truly yours,

KBBrem

Katherine Butler Brem
Clinical Professor of Law

Katherine Brem - kbrem@central.uh.edu - (713) 743-5945

WRITING SAMPLE

Emily Landry
75 W. Sandalbranch Circle
The Woodlands, Texas 77382
ellandry@cougarnet.uh.edu

In April 2023, I prepared the attached Reply in Support of Summary Judgment in my Federal Pre-Trial Drafting class. The reply brief was in support of summary judgment in favor of a defendant who had been sued for negligence by the estate of the defendant's deceased employee. The employee had died due to injuries he sustained during the course of his employment with the defendant.

The civil action number, parties, facts, named individuals, and addresses contained in the motion are entirely fictional. For purposes of grading confidentiality, I was required to sign the motion using the name of a fictional attorney and a fictional law firm representing the defendant. Accordingly, my name is not listed anywhere on the motion.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SALLY JACKSON, Individually and as	§	
Representative of the Estate of	§	
JAKE FIELDS, and BLADE FIELDS,	§	
	§	
<i>Plaintiffs,</i>	§	CIVIL ACTION NO. 4:22-CV-021415
	§	
VS.	§	JURY
	§	
PRIDE CHEMICALS, INC., and	§	
COLEMAN INDUSTRIES, INC.,	§	
	§	
<i>Defendants.</i>	§	

**DEFENDANT COLEMAN INDUSTRIES, INC.’S
REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Defendant Coleman Industries, Inc., (“Coleman”) files this Reply in Support of its Motion for Summary Judgment and, in support, would show the Court the following:

I. SUMMARY OF THE REPLY

Aside from its questionable attempt to make psychiatric diagnoses, Fields’ response completely distorts the issues by bombarding Coleman with irrelevant facts, introducing new claims that he did not plead in his petition, ignoring uncontroverted evidence, and misapplying the law. To be clear, Coleman’s motion has never been about the merits of Fields’ negligence claim, which are *not* at issue before this Court.

The Court should grant Coleman’s motion for summary judgment for two reasons:

- (1) Coleman did not owe a duty to Fields; and, or in the alternative,
- (2) Fields was Coleman’s borrowed employee for purposes of the Texas Workers’ Compensation Act (the “Act”).

Because Fields' response fails to provide any competent evidence sufficient to raise a genuine issue of material fact on either issue, Coleman is entitled to summary judgment as a matter of law.

IV. ARGUMENTS & AUTHORITIES

Coleman wins on the issues presented for two reasons.

First, Fields waived his argument that Coleman affirmatively undertook a duty to Fields because he failed to raise it in his live pleadings. Instead, he ambushed Coleman by raising this argument for the very first time in his response. This is improper and extremely prejudicial to Coleman.

Second, Coleman correctly applied the right-of-control tests for each issue in their appropriate contexts. Fields, on the other hand, mistakenly conflates the two analyses as one in the same. In doing so, Fields fatally overlooks that the inquiry of control serves one purpose under the duty issue and a totally different purpose under the Act. *Wingfoot Enters. v. Alvarado*, 111 S.W.3d 134, 146 (Tex. 2003) (explaining that determining employment status for workers compensation purposes is not the same thing as determining employment status for a negligence claim). *See also Waste Mgmt. of Tex. v. Stevenson*, 622 S.W.3d 273, 281 & n.4 (Tex. 2020) ("the two inquiries serve different purposes and can diverge to some extent in the dual-employment context.").

Although "it is no doubt true in many cases that the two inquiries will look identical", the Court must review them within their proper contexts. *Id.* The control test to determine duty in a common-law negligence claim attempts to impose liability, whereas the Act does not. *Garza v. Exel Logistics, Inc.*, 161 S.W.3d 475, 481 (Tex. 2005) (quoting *Wingfoot*, 111 S.W.3d at 146). This is why the control test for the duty issue is narrowed to who controlled the specific injury-

causing equipment. *Exxon Corp. v. Tidwell*, 867 S.W.2d 19, 22-23 (Tex. 1993). In contrast, the control test to determine borrowed employee status under the Act calls for a more holistic analysis of the employment relationship. *Waste Mgmt.*, 622 S.W.3d at 284.

Coleman properly applied the control tests for each issue and thus successfully established that: (1) it did not owe a duty to Fields and (2) Fields was its borrowed employee. Fields' response failed to raise a genuine issue of material fact on either issue. Consequently, Coleman is entitled to summary judgment as a matter of law.

1. Coleman did not owe a duty to Jake Fields under the Restatement or Texas common law.

A. Fields waived his affirmative undertaking argument and should not be permitted to raise it now.

Trying to confuse the issues before the court, Fields ambushed Coleman by asserting for the very first time in its response that Coleman assumed a duty to Fields under Section 324A of the Restatement (Second) of Torts. Fields' petition explicitly alleges that Coleman's omissions and failures caused his injury. Yet now, Fields complains that Coleman affirmatively undertook Pride's duty to Fields—the total opposite of failures and omissions.

This Court must see past this desperate and unfair tactic. Fields waived his affirmative undertaking argument by failing to raise it in his pleadings, thus this Court should refuse to consider it.

B. Fields concedes that Coleman never undertook the filter change process.

Even if Fields had not waived its affirmative undertaking argument, Coleman did not assume a duty to Fields because Pride continued to maintain control over the filter process. While Coleman does not dispute that Texas courts have adopted the Second Restatement, Fields conveniently fails to mention that there is more to the inquiry.

For duty to flow from Coleman to Fields, Coleman had to undertake the *specific performance* of the activity or equipment that caused the plaintiff's injury. This requirement is clearly explained by the cases Fields relies on. Specifically, in *Torrington Co. v. Stutzman*, 46 S.W.3d 829, 839 (Tex. 2000), the Texas Supreme Court, applying the Restatement, settled that a parent company's assumption of an undertaking cannot be broad. Rather, "[a] person's duty to exercise reasonable care in performing a voluntarily assumed undertaking is *limited to that undertaking*." *Id.* (citing *Fort Bend County Drainage Dist. V. Sbrusch*, 818 S.W.2d 392, 397 (Tex. 1991) (emphasis added)). This is further echoed in the other cases Fields cites. *See Colonial Sav. Ass'n v. Taylor*, 544 S.W.2d 116, 119-20 (Tex. 1976) (jury finding that an insurance company who had issued a specific policy had undertaken a duty to exercise reasonable care in providing coverage); *see also Seay v. Travelers Indem. Co.*, 730 S.W.2d 774 (at issue was whether insurance company had knowledge of "specific standards" sufficient to undertake inspection of a boiler that caused the death of the insured's employee).

These cases resoundingly support Coleman, not Fields. So, if Coleman assumed any undertaking that would render it liable for Fields' death under the Restatement, that undertaking was limited to one thing and one thing only: the filter change process. And Coleman could not have undertaken a duty related to the filter change procedure because it remained under Pride's control. In Fields' own words:

"[A]t the time of the accident, Jake Fields was a **Pride** employee, working on a **Pride** plant, on a piece of equipment owned by **Pride**, using **Pride** tools, pursuant to a **Pride procedure**." Pl.'s Resp. at 5. (emphasis added).

By admitting that he was working under a Pride procedure at the time of the accident, Fields concedes that Coleman did not exercise specific control of the filter change process that

resulted in Fields' death. Nor has Fields shown that Coleman at any point undertook the filter change process at the time of the accident.

And Fields' response to the Johnson Affidavit? Crickets. He completely ignores that Johnson, a Pride supervisor, retained the right to control Fields' work regarding the filter change process, and that she exercised this right by disciplining Fields. Johnson Aff. ¶ 6. The affidavit further establishes that Pride, not Coleman, controlled the filter change process.

Because Fields cannot prove that Coleman affirmatively undertook the filter change process, Coleman did not assume a duty to Fields under the Restatement.

C. Coleman did not owe any other common law duty to Fields.

For the same reason his affirmative undertaking argument fails, Fields likewise cannot prove Coleman owed Fields any common law duty. To do so, Fields had to prove that Coleman had actual control or a right of control over the *specific aspect* of the safety and security that led to the plaintiff's injury. *Tidwell*, 867 S.W.2d at 23 (emphasis added). Control over the general operation of the workplace is insufficient; "liability is imposed when there is specific control over the activity that caused the accident." *Coastal Corp v. Torres*, 133 S.W.3d 776, 779 (Tex. 2004).

Fields fails to cite to a single case that undermines the Texas Supreme Court decisions in *Tidwell* and *Torres*. Rather, Fields tries to establish control through blanket assertions that Coleman generally ran "all aspects" of the plant that led to Fields' death. Pl.'s Resp. at 4. Although Coleman managed the plant's maintenance and safety positions, it never controlled the filter change process. Cutsinger Dep. 2:28-30; 3:10-11. Pride, and only Pride, controlled the filter change process. Therefore, if there was any duty owed to Fields, it was owed by Pride, not Coleman.

Pertinent facts do not disappear just because Fields does not want to acknowledge them. Because Fields cannot raise a fact issue as to Pride’s control of the filter, Coleman did not owe Fields a duty. Therefore, this Court must grant summary judgment in favor of Coleman.

2. In the alternative, the exclusive remedy provision of the Texas Workers’ Compensation Act bars Fields’ negligence claim against Coleman.

The Texas Legislature intentionally designed the exclusive remedy provision of the Act to protect employers like Coleman from liability and to compensate employees like Fields for workplace-related injuries—a delicate balance that considers the needs of both. *Port Elevator-Brownsville, L.L.C. v. Casados*, 358 S.W.3d 238, 241 (Tex. 2012). Fields is now trying to throw a wrench in the statutory scheme that benefits many.

Coleman is entitled to the exclusive remedy defense because it successfully established that: (1) Fields was an employee of defendant within the meaning of the Act; and (2) it was a subscriber to a workers’ compensation insurance policy at the time of the accident. *Western Steel Co. v. Altenburg*, 206 S.W.3d 121, 121 (Tex. 2006).

Because Fields did not raise a fact issue on either element, Coleman is entitled to summary judgment.

A. The evidence overwhelmingly establishes that Fields was Coleman’s borrowed employee.

- i. The Texas Supreme Court has repeatedly settled that an employee can have more than one employer.*

As a threshold matter, Fields’ response ignores established Texas case law that settles an employee can have more than one employer under the Act. *Garza*, 161 S.W.3d at 475-76; *Wingfoot*, 111 S.W.3d 134 at 143; *Port Elevator-Brownsville, L.L.C.*, 358 S.W.3d at 243.

The one case Fields discusses in support of his argument that Pride was Fields’ only employee—*Anthony Equip. Corp. v. Irwin Steel Erectors, Inc.* 115 S.W.3d, 191, 2001 (5th Cir.

2003) —is wholly inapplicable to the issue here. In *Anthony*, the court answered the borrowed servant defense on a negligence claim, *not* on an exclusive remedy defense under the Act. Again, Fields fails to make the necessary distinction.

Garza, *Wingfoot*, and *Port-Elevator-Brownsville* are the proper authorities on this issue—not *Anthony*. Therefore, an employee can have multiple employers under the Act.

ii. *Fields misapplies the law regarding determination of borrowed employee status.*

This Court can absolutely decide borrowed employee status on summary judgment. *Waste Mgmt.* was a 2021 Texas Supreme Court case that determined borrowed employee status on summary judgment. This Court can too.

Moreover, Fields’ reliance on the Restatement (Second of Agency) § 227, cmt., *Humble Oil & Refining Co. v. Martin*, 222 S.W.2d 995, 997-98 (Tex. 1949), and *Exxon Corp. v. Perez*, 842 S.W.2d 629, 630 (Tex. 1992) is misguided. None of these authorities support his argument that the question of borrowed servant is almost always a question of fact for the jury.

First, the portion of the Restatement Fields cites merely lists the various factors a court may consider in determining borrowed employee status. Nowhere does it state that only a jury can consider these factors.

Second, *Humble Oil* does not apply here at all. In that case, the borrowed servant doctrine was applied in a negligence claim, not a workers compensation claim. Yet again, Fields fails to differentiate between the two. Are we seeing a pattern?

Third, *Perez* is distinguishable from the facts in this case. In *Perez*, the court found that, at trial, the question of borrowed servant should have been kept from the factfinder: the jury. If this case was presently being tried before a jury, then Fields’ reliance on *Perez* would be appropriate. But the parties here are not at trial. *Perez* does not apply.

Simply put, this Court can decide the question of borrowed employee status.

iii. *The chain of command evidence is sufficient to establish Fields as Coleman’s borrowed employee.*

Coleman has proved that Fields was its borrowed employee and Fields has not provided any evidence to the contrary. Instead, Fields needlessly makes much of the fact that the cases cited by Coleman did not specifically list “chain of command” verbatim as one of the factors to determine borrowed employee status.

Fields is splitting hairs. Texas courts don’t spell out “chain of command” as a specific factor, but they certainly look at who had the authority to control the details of an employee’s work and to discipline an employee for engaging in unauthorized conduct. *Waste Mgmt.*, 622 S.W.3d 273. Here, the chain of command allowed Clark, Fields’ first-line Coleman supervisor, to do both. In response, Fields states that there is no evidence that a Coleman employee had a single conversation with Fields about the filter. Pl.’s Resp. at 7. Again, hair splitting. In his sworn declaration, Clark, a Coleman supervisor, specifically testifies that he disciplined Fields for Fields’ failure to follow the proper filter-change procedure. Clark Decl. ¶ 3. That the discipline may not have taken the form of a verbal conversation did not take away Clark’s authority to discipline Fields.

Fields’ attempts to create fact issues with the Johnson Affidavit and Cutsinger’s testimony do not fare well either. Pride was undisputedly Fields’ direct employer and thus controlled some aspects of Fields’ work. Pl.’s Resp at 4; Def’s Answer ¶ 9. As such, Johnson could also discipline Fields and Pride provided Fields with his tools under their procedure. Johnson Aff. However, these facts do not preclude Coleman from being Fields’ borrowing employer under the Act. *Waste Mgmt.*, 622 S.W.3d 273 at 278 & h.n3 (the undisputed fact that plaintiff was one person’s employee did not dictate whether plaintiff was also defendant’s employee for workers

compensation purposes.) Nor is it material that Coleman did not train Fields on the filter change process, because determination of borrowed employee status does not require a showing that the borrowing employer controlled every action of an employee. *Id.* at 280.

The evidence overwhelmingly favors the conclusion that Fields was Coleman's borrowed employee under the Act. Fields failed to raise a genuine issue of fact to the contrary. Accordingly, Coleman is entitled to summary judgment.

B. Coleman was a subscriber to workers' compensation insurance at the time of the accident.

In its motion for summary judgment, Coleman provided proof that it was a subscriber to a workers' compensation policy on the date of the accident. Zachary Aff. Ex. A. Fields' response did not dispute this. Therefore, there is no genuine issue of fact regarding Coleman's status as a Texas Workers' Compensation subscriber.

In the end, this case illustrates exactly why the Act's exclusive remedy provision was created in the first place. To deny Coleman protection on this basis not only turns the Act on its head but would blatantly disregard the Texas Legislature's wishes to balance the interests of employers and employees when unfortunate, injury-producing accidents occur in the workplace.

Furthermore, employers can currently choose whether to subscribe to a workers' compensation plan. But if the Court denies Coleman summary judgment, employers will be disincentivized from doing so. This would chill judicial economy and the predictability that the Act seeks to provide. The result? More litigation. Less certainty.

The Court should uphold the intent of the Texas Legislature. Because Coleman established that Fields was a borrowed employee of Coleman and that Coleman was a subscriber to a workers' compensation policy at the time of the accident, Fields' negligence claim is barred as a matter of law.

V. CONCLUSION AND PRAYER

For these reasons, Coleman respectfully requests that the Court grant Coleman's Motion for Summary Judgment on the duty issue, or, alternatively on the basis that the Act bars Fields' negligence claim.

Coleman further asks this Court to award Coleman its reasonable attorney fees, costs of court, and such other and further relief, both in law and in equity, to which Coleman is justly entitled.

Respectfully submitted,

VINSON BOTTS & FULBRIGHT LLP

By: /s/ Joshua Biegler
Joshua Biegler
State Bar No. 00792424
S.D. Texas Federal ID No. 67898
1301 McKinney Street, Suite 3800
Houston, Texas 77010-3095
Telephone: (713) 220-2500
Facsimile: (713) 220-2000
Email: jbiegler@vbflaw.com

Attorney-in-Charge for Defendants
Pride Chemicals, Inc. and Coleman Industries

OF COUNSEL:

VINSON BOTTS & FULBRIGHT LLP

By: Exam No. 7072
1301 McKinney Street, Suite 3800
Houston, Texas 77010-3095
Telephone: (713) 220-2500
Facsimile: (713) 220-2000

Applicant Details

First Name	Carlos		
Middle Initial	A.		
Last Name	Larrauri		
Citizenship Status	U. S. Citizen		
Email Address	larrauri@umich.edu		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> Street 9818 SW 94th Terrace City Miami State/Territory Florida Zip 33176 </td> </tr> </table>	Address	Street 9818 SW 94th Terrace City Miami State/Territory Florida Zip 33176
Address			
Street 9818 SW 94th Terrace City Miami State/Territory Florida Zip 33176			
Contact Phone Number	(305) 510-9196		

Applicant Education

BA/BS From	New College of Florida
Date of BA/BS	May 2011
JD/LLB From	The University of Michigan Law School http://www.law.umich.edu/currentstudents/careerservices
Date of JD/LLB	May 3, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Michigan Law Review
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Mendlow, Gabriel
mendlow@umich.edu
734-764-9337

Chopp, Debra
dchopp@umich.edu
734-763-1948

Price, Nicholson
wnp@umich.edu
734-763-8509

Stein, Michael
mastein@law.harvard.edu
617-495-1726

This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am a rising third-year law student at the University of Michigan Law School and a Zuckerman Fellow at Harvard's Center for Public Leadership, where I am pursuing a concurrent master in public administration at the Harvard Kennedy School of Government. I am writing to apply for a clerkship in your chambers for the 2024–2025 term. A clerkship in your chambers will offer me unparalleled preparation for a career in public service as a healthcare rights advocate.

Having practiced for five years as a dual board-certified family nurse practitioner and psychiatric mental health nurse practitioner, I have seen firsthand how the legal system can hinder or facilitate positive change, underscoring the vital importance of compassionate, thoughtful decision-making. Nonetheless, to develop greater literacy in the legal system and the tools needed for systemic advocacy, I decided to build upon my clinical training and pursue legal and policy education.

Furthermore, my work across academia and policymaking has allowed me to hone my written and oral advocacy, research diligence, and ability to collaborate with others. In addition to serving as a Senior Editor of the *Michigan Law Review*, I have assisted professors at both Harvard and Michigan with research leading to publishable scholarship, including a current chapter for an American Psychiatric Association clinical textbook, a publication in *World Psychiatry*, and other projects.

While my substantive focus has been on the intersection of mental health, law, and policy, I am ready to broaden my understanding of various legal areas, gain valuable insights into judicial decision-making, and hone my legal writing and argument construction skills. I believe your guidance and mentorship would be invaluable in my personal and professional growth as an attorney, and I would be eager to contribute and continue developing these skills and insights as a clerk in your chambers.

I have attached my resume, transcripts, and writing sample(s) for your review. Letters of recommendation from the following professors are also attached:

- Professor Michael Ashley Stein: mastein@law.harvard.edu, (617) 495-1726
- Professor William Nicholson Price II: wnp@umich.edu, (734) 763-8509
- Professor Debra Chopp: dchopp@umich.edu, (734) 763-1948
- Professor Gabriel Mendlow: mendlow@umich.edu, (734) 764-9337

Thank you for your time and consideration.

Respectfully,

Carlos A. Larrauri

Carlos A. Larrauri

9818 SW 94th Terrace, Miami, FL 33176
(305) 510-9196 • larrauri@umich.edu

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL	Ann Arbor, MI
HARVARD KENNEDY SCHOOL OF GOVERNMENT	Cambridge, MA
Concurrent Juris Doctor/Master in Public Administration	May 2024
Journal: <i>Michigan Law Review</i> , Senior Editor, Vol. 122	
Honors: Zuckerman Fellowship, Harvard's Center for Public Leadership (full tuition & stipend for one year)	
Dean's Scholarship, University of Michigan (\$60,000)	
Activities: Research Assistant for Prof. Gabriel Mendlow (researching coercion in mental healthcare)	
1L Representative for the Latinx Law Students Association	

UNIVERSITY OF MIAMI SCHOOL OF NURSING AND HEALTH STUDIES	Coral Gables, FL
Master of Science in Nursing	August 2017
Honors: Sigma Theta Tau International Honor Society of Nursing	
Award: The 2017 Community Engagement Award	

MIAMI DADE COLLEGE BENJAMÍN LEÓN SCHOOL OF NURSING	Miami, FL
Bachelor of Science in Nursing	July 2016
Honors: Benjamin Leon Scholarship (full tuition)	

NEW COLLEGE OF FLORIDA (THE HONORS COLLEGE)	Sarasota, FL
Bachelor of Arts in Humanities	April 2011
Honors: Florida Academic Scholars Award (full tuition)	

EXPERIENCE

SIDLEY AUSTIN, LLP	New York City, NY & Washington D.C.
<i>Summer Associate 2L Diversity & Inclusion Fellow</i>	May 2022 – July 2022; May 2023 – July 2023
<ul style="list-style-type: none"> • Drafted an 18-page memo analyzing federal case law interpreting the statutory provisions and implementing regulations of FDA's three-year exclusivity for new clinical investigations. • Conducted legal research on capital litigation, social security disability, and police misconduct matters. 	

THE UNIVERSITY OF MICHIGAN COLLEGE OF LITERATURE, SCIENCE, AND THE ARTS	Ann Arbor, MI
<i>Graduate Student Instructor for the Global Scholars Program</i>	August 2022 – May 2023
<ul style="list-style-type: none"> • Delivered a lecture to 70+ students on a "Rights-based Approach to Mental Health" in the Fall of 2022. • Co-led check-ins with student leaders, provided guidance on facilitating student groups, and delivered feedback on essays and other written assignments. 	

THE UNIVERSITY OF MICHIGAN PEDIATRIC ADVOCACY CLINIC	Ann Arbor, MI
<i>Student Attorney 1L Goodwin Diversity Fellow</i>	May 2021 – August 2021
<ul style="list-style-type: none"> • Worked on an interdisciplinary team with physicians as a medical-legal partnership to provide relief for legal issues linked to children's medical and social problems, including housing, education, and public benefits. • Conducted legal research on family law, interviewed clients, and cross-examined a witness at trial. 	

UNIVERSITY OF MIAMI SCHOOL OF NURSING AND HEALTH STUDIES	Coral Gables, FL
<i>Lecturer, Psychiatric Nursing</i>	August 2018 – May 2020
<ul style="list-style-type: none"> • Trained seven accelerated BSN students per semester on the fundamentals of psychiatric nursing in community mental health and inpatient psychiatric facilities. • Graded and delivered feedback on essays and other written assignments. 	

CARLOS A. LARRAURI, LLC	Miami, FL
<i>Clinical Director & Advanced Practice Registered Nurse</i>	November 2017 – August 2023
<ul style="list-style-type: none"> • Diagnosed, prescribed, and evaluated treatment response for fifteen to twenty-five patients per week in a community mental health center in Washington State (via telepsychiatry). 	

C. Larrauri

- Supervised staff and patient care at four community mental health centers in South Florida and ensured compliance with applicable laws, rules, and regulations.

IMIC MEDICAL RESEARCH CENTER

Sub-Investigator

Palmetto Bay, FL

April 2018 – August 2018

- Conducted clinical research for over twelve successful phase II, III, and IV drug trials.
- Ensured study compliance with regulations, guidelines, and standard operating procedures.

CORRECT CARE RECOVERY SOLUTIONS

Psychiatric Registered Nurse

Homestead, FL

November 2015 – April 2016

- Administered medications, evaluated psychiatric and medical progress, and recorded patient data for up to twenty-five patients daily at a maximum-security forensic psychiatric hospital.
- Directed support staff, including a team of three mental health technicians.

SELECTED SCHOLARSHIP

- Fusar-Poli, P., Sunkel, C., **Larrauri, C. A.**, Keri, P., McGorry, P. D., Thornicroft, G., & Patel, V. (2023). Violence and schizophrenia: the role of social determinants of health and the need for early intervention. *World psychiatry*, 22(2), 230–231. <https://doi.org/10.1002/wps.21074>.
- Brady, L. S., **Larrauri, C. A.**, & AMP SCZ Steering Committee (2023). Accelerating Medicines Partnership® Schizophrenia (AMP® SCZ): developing tools to enable early intervention in the psychosis high risk state. *World Psychiatry*, 22(1), 42–43. <https://doi.org/10.1002/wps.21038>.
- **C.A. Larrauri** & C. Garret. First-person accounts of advocacy work. In: Intervening Early in Psychosis – a team approach, edited by K.V. Hardy, J.S. Ballon, D.L. Noordsy, and S. Adelsheim. Washington DC: American Psychiatric Association Publishing, 2019.

SELECTED SERVICE AND LEADERSHIP

FOUNDATION FOR THE NATIONAL INSTITUTES OF HEALTH

Bethesda, MD

Steering Committee Co-Chair for the Accelerated Medicines Partnership program in Schizophrenia

October 2020 – Present

- Co-leading a \$100 million public-private partnership to develop more effective medicines by defining and maintaining the research plan, reviewing the project's progress, and providing an assessment of milestones.

NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE

Washington D.C.

Planning Committee for Novel Molecular Targets for Mood Disorders and Psychosis

November 2020 – March 2021

- Planned a virtual workshop by developing the workshop's agenda, selecting, and inviting speakers and discussants, and assisting in moderating the discussions.

THE BROAD INSTITUTE OF MIT AND HARVARD

Cambridge, MA

Schizophrenia Spectrum Biomarkers Consortium Ethics Workgroup

November 2019 – Present

- Developing participant education materials and creating patient and family surveys to enhance patient engagement and outreach for the biomarkers study.

NATIONAL ALLIANCE ON MENTAL ILLNESS

Arlington, VA

Board of Directors, Former Secretary & Chair of Board Policy and Governance

July 2017 – June 2023

- Recorded and preserved minutes and reviewed agendas for executive committee meetings.
- Served on strategic planning, governance, and policy committees, and workgroup on diversity and inclusion.

ADDITIONAL

Languages: Spanish (professional working proficiency in reading, writing, and speaking)

Programming Skills: STATA (intermediate proficiency) and R (beginner proficiency)

Public Speaking: Harvard Law School, Harvard Business School, Stanford, UCSF, National Academies

Interests: Composing original music, traveling, cooking, genealogy, financial investing, and weightlifting

Control No: E196661401

Issue Date: 05/30/2023

Page 1

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Larrauri, Carlos Alberto

Student#: 86798752



Paul R. Larson
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Credit Grade
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Fall 2020 (August 31, 2020 To December 14, 2020)

LAW	510	001	Civil Procedure	Maureen Carroll	4.00	4.00	4.00	B+
LAW	520	005	Contracts	Albert Choi	4.00	4.00	4.00	B+
LAW	580	008	Torts	Kyle Logue	4.00	4.00	4.00	B+
LAW	593	001	Legal Practice Skills I	Margaret Hannon	2.00		2.00	S
LAW	598	001	Legal Pract:Writing & Analysis	Margaret Hannon	1.00		1.00	S

Term Total GPA: 3.300 15.00 12.00 15.00

Cumulative Total GPA: 3.300 12.00 15.00

Winter 2021 (January 19, 2021 To May 06, 2021)

LAW	530	001	Criminal Law	Gabe Mendlow	4.00	4.00	4.00	B+
LAW	540	003	Introduction to Constitutional Law	Richard Primus	4.00	4.00	4.00	B
LAW	594	001	Legal Practice Skills II	Margaret Hannon	2.00		2.00	S
LAW	673	001	Family Law	Maude Myers	3.00	3.00	3.00	B+
LAW	898	001	Law and Psychiatry Crossroads	Debra Pinals	2.00	2.00	2.00	A+

Term Total GPA: 3.361 15.00 13.00 15.00

Cumulative Total GPA: 3.332 25.00 30.00

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Issue Date: 05/30/2023

Page 2

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Larrauri, Carlos Alberto
Student#: 86798752



Paul R. Larson
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Grade
Fall 2022 (August 29, 2022 To December 16, 2022)								
LAW	448	001	Business Planning	Stefan Tucker	2.00	2.00	2.00	A
LAW	781	001	FDA Law	Ralph Hall	3.00	3.00	3.00	A
LAW	839	001	Innovation in Life Sciences	Nicholson Price	2.00	2.00	2.00	A
LAW	900	377	Research	Nicholson Price	1.00	1.00	1.00	A
LAW	910	001	Child Advocacy Clinic	Joshua Kay	4.00	4.00	4.00	B+
LAW	911	001	Child Advocacy Clinic Seminar	Frank Vandervort	3.00	3.00	3.00	A-
Term Total				GPA: 3.753	15.00	15.00	15.00	
Cumulative Total				GPA: 3.490	40.00	45.00		
Winter 2023 (January 11, 2023 To May 04, 2023)								
LAW	663	001	Legal Tech Literacy&Leadership	Dennis Kennedy	2.00	2.00	2.00	A
LAW	712	002	Negotiation	Barbara Kaye	2.00	2.00	2.00	A
LAW	727	001	Patent Law	Rebecca Eisenberg	4.00	4.00	4.00	B+
LAW	737	001	Higher Education Law	Jack Bernard	4.00	4.00	4.00	A-
LAW	877	001	Law in Slavery and Freedom	Rebecca Scott	2.00	2.00	2.00	B+
LAW	900	348	Research	Gabe Mendlow	2.00	2.00	2.00	A
Term Total				GPA: 3.662	16.00	16.00	16.00	
Cumulative Total				GPA: 3.539	56.00	61.00		

End of Transcript
Total Number of Pages 2

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University of Michigan Law School Grading System

Honor Points or Definitions

Through Winter Term 1993		Beginning Summer Term 1993	
A+	4.5	A+	4.3
A	4.0	A	4.0
B+	3.5	A-	3.7
B	3.0	B+	3.3
C+	2.5	B	3.0
C	2.0	B-	2.7
D+	1.5	C+	2.3
D	1.0	C	2.0
E	0	C-	1.7
		D+	1.3
		D	1.0
		E	0

Other Grades:

- F Fail.
- H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.
- I Incomplete.
- P Pass when student has elected the limited grade option.*
- PS Pass.
- S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)
- T Mandatory pass when student is transferring to U of M Law School.
- W Withdrew from course.
- Y Final grade has not been assigned.
- * A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

Official Copies

An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499

UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109-1215

Gabriel S. Mendlow
Professor of Law and Professor of Philosophy

June 06, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am delighted to recommend Carlos Larrauri for a clerkship. After a strong performance in my 1L Criminal Law class at Michigan, Carlos took on two credits of independent research assisting me with a book project on criminal law and freedom of thought. He quickly established himself as one of the finest research assistants I have ever employed. Given the exceptional quality of his work product and his high degree of professionalism, I am confident that Carlos would make a wonderful law clerk. If I were a judge, I would hire him without hesitation.

An accomplished mental health practitioner pursuing both a J.D. at Michigan and a Master of Public Administration at Harvard, Carlos possesses knowledge and experience that are very rare for a law student. Carlos is a psychiatric registered nurse who has worked not only as a front-line clinician treating the most challenging patient populations, but also as a clinic director, a pharmaceutical researcher, a clinical instructor, a lecturer, and a published author. Building on this formidable foundation, Carlos has used his time at Michigan and Harvard to develop expertise in mental health law and policy. While I have found that law students with advanced training in another field and significant prior work experience sometimes have trouble learning how to think, write, and reason like a lawyer, Carlos has distinguished himself as a legal researcher and writer, having served as a Senior Editor of the Michigan Law Review. He is, in short, a talented lawyer-to-be—not to mention a conscientious, hardworking, and humble co-worker.

Capable of conducting expert-level research at the intersection of three fields—health law, health policy, and psychiatry—Carlos was uniquely qualified to provide the assistance I needed for a research project on the legal and ethical implications of coercion and forced treatment in mental healthcare. He wrote several outstanding memoranda integrating disparate topics that very few people could have handled as expertly as he did—from analytical summaries of the case law governing restoration of trial competency to lucid synopses of research on the phenomenology and subjective experiences of patients who had been subjected to forced psychotropic medication. Each of Carlos' first drafts was as well-written, impeccably-sourced, and tightly organized as material for which I would gladly award a grade of A.

Most impressive about Carlos is the depth of his commitment to reforming the law, policy, and practice of mental health. As a practitioner, Carlos has worked to provide compassionate and culturally competent care to patients with mental health conditions. As a policy advocate, he has argued for policies that promote mental health parity and expand access to much needed services. As a budding lawyer, he is committed to a career in healthcare advocacy. I am genuinely excited to see what he accomplishes in the years ahead.

As you can see, I think very highly of Carlos. It is difficult for me to describe Carlos' professionalism and maturity without sounding hyperbolic. He would be a dream to have in chambers.

Please don't hesitate to contact me if you have any questions.

Sincerely,

Gabriel S. Mendlow

Gabriel Mendlow - mendlow@umich.edu - 734-764-9337

June 01, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am delighted to write this letter of recommendation for Carlos Larrauri. Carlos is a fascinating person with a diverse array of talents and skills. He will make a wonderful clerk.

Carlos worked in the Pediatric Advocacy Clinic during the summer of 2021. He had just finished his 1L year, where the law school was operating almost entirely remotely, and we were facing another summer of remote work. No one was excited about this, but Carlos brought excellent energy to his experience and the focus necessary to learn as much as he could from it.

Students in the clinic represent low income families on legal issues connected to child health and wellbeing. They work in an interdisciplinary team of social workers, physicians, and lawyers in an effort to address social determinants of health. During the regular semester, students take a class alongside their clinic work. Over the summer, students work in the clinic as a full-time job. Carlos' background in healthcare and in mental health specifically made me excited to have him as a student in the clinic. He did not disappoint.

Carlos worked on a number of cases over the summer. I'll describe one in particular because it showcases his skills. The clinic was representing a survivor of domestic violence, originally from Bangladesh, who was seeking a personal protection order against her husband. The case was complicated because the client had experienced an enormous amount of trauma and also had significant mental health concerns. Her husband had recently had guardianship over her and the clinic had helped her get that guardianship terminated. Now she wanted protection from her husband's abuse as well as a divorce and custody of her daughter. Carlos was the perfect person to put on this case. He was able to deftly navigate the many cultural and mental health issues that working with this client presented. He counseled her with skill and kindness and prepared her to testify in her trial. Carlos wrote direct and cross examination questions and conducted the direct examination and cross examination of multiple witnesses. One of the witnesses was the client's 22-year-old son. Carlos was particularly sensitive to him and the issues surrounding testifying in a case between two parents.

In addition to Carlos' high quality work on his cases, he was a cheerful and calming presence for the other clinic students when we met weekly over zoom. He shared his insights about the clinic's many ongoing cases and helped his fellow students think about them more holistically. Carlos is also exceptionally organized – he managed to work a second job during the summer without letting anything slip through the cracks. With his multiple degrees, his extensive advocacy and counseling experience, and his passion for helping others, I can't wait to see what he does with his legal career. Starting that career with a clerkship seems like the perfect first step. I recommend him highly.

Please let me know if you need any additional information from me.

Sincerely,

Debra Chopp

University of Michigan Law School
Clinical Professor of law
Associate Dean for Experiential Education
Director, Pediatric Advocacy Clinic
(734) 763-1948
dchopp@umich.edu

Debra Chopp - dchopp@umich.edu - 734-763-1948

UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109-1215

W. Nicholson Price II
Professor of Law

May 31, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to enthusiastically recommend Carlos Larrauri for a clerkship in your chambers. Carlos is a bright, tremendously motivated, energetic student who will be an asset to chambers.

Carlos was a student in my Innovation in the Life Sciences seminar in Fall 2022. The seminar asks students to master a complex body of literature about the different bodies of law influencing biomedical innovation, from patent law to FDA law to insurance reimbursement policy. It's complicated, and I demand a lot of the students: mastering hard readings, self-directed class contribution, and high-quality writing. Carlos was a frequent class contributor; his comments were smart, incisive, and interesting. And when he was wrong, he was good about recognizing it. All of this bodes well for his possibilities as a clerk.

I want to single out Carlos' term paper. I give my seminar students the option to write a term paper or several shorter responses; Carlos chose the paper. He was sharp in coming up with early, interesting possibilities, discussed them with me thoughtfully, and leapt into the topic he chose: inadequate incentives and development challenges for drugs to treat serious mental illness. His first draft was well written, well formatted, and well sourced—and well short of the mark in terms of making a convincing argument. I gave him tough criticism, suggesting major structural changes, big cuts, and new emphases. I didn't give him the answers, but I pointed out big problems. And I was truly, delightfully surprised by how well he responded to my critiques. His revised draft was terrific; much, much better, convincing, polished, and interesting. I recommended that he try to publish it (and indeed, I know he has been publishing elsewhere as well). Carlos' willingness to work hard to improve a paper that was polished but flawed is a real strength, and one that I think is an excellent one in a clerk. Clerking involves a steep learning curve, and I think Carlos will charge up that learning curve at full speed.

I'd be remiss if I didn't mention a bit about Carlos' path. He's a first-gen student, and he's absolutely passionate about healthcare advocacy. I think he's going to be an excellent, driven lawyer, and that clerking will be an important step in his professional development.

Finally, personally Carlos has been great to work with. He's unfailingly polite and professional; comes into meetings ready to go and move tasks forward; writes careful, succinct, emails; and is generally very efficient while still being warm and engaged. It makes things very easy.

It should be clear that I think highly of Carlos. He's smart, hard-working, and very focused. I suspect he will make a very good clerk, and I hope you take the time to meet him and see for yourself.

Thank you for taking the time to read this letter; if you have any other questions, or if there's anything else I can usefully say, please don't hesitate to contact me at 301-467-0643 or wnp@umich.edu.

Sincerely yours,

W. Nicholson Price II
Professor of Law
University of Michigan Law School



HARVARD LAW SCHOOL

CAMBRIDGE · MASSACHUSETTS · 02138

PROFESSOR MICHAEL STEIN

*Executive Director,
Harvard Law School Project on Disability*

*Austin Hall 305
1515 Massachusetts Avenue
617-495-1726; mastein@law.harvard.edu*

March 30, 2023

Dear Judge:

I am co-founder and Executive Director of the Harvard Law School Project on Disability and a Visiting Professor at Harvard Law School since 2005, and have known Carlos Larrauri since he began his master's in public administration in the fall of 2021 at the Harvard Kennedy School, where he received a Zuckerman Fellowship from Harvard's Center for Public Leadership in recognition of his demonstrated service and leadership potential. Carlos was in my HKS Disability Law and Policy class, where he was among the brightest and most passionate students. Even among the highly ambitious and dynamic group that HKS attracts, Carlos is a stand-out, both academically and as a leader. In the semesters since, Carlos and I have worked closely on several academic projects.

I have been particularly struck by Carlos's exceptional ability to meld practical experience with legal and policy analysis and to understand and anticipate the practical implications of law and policy decision making. He possesses a rare combination of incisive thought leadership, multidisciplinary training, and strong written and oral advocacy.

We recently published both a short book review and an article entitled *HIPAA vs. Ethical Care: Accounting for Privacy with Neuropsychiatric Impairments* that was featured on the cover issue of PSYCHIATRIC TIMES. Carlos's research and writing are notable for their high level of reasoning and care. He articulates legal arguments with clarity and force, skillfully balancing careful research, rigorous analysis, and persuasive writing. Additionally, Carlos consistently demonstrates professionalism and maturity in working with colleagues. His dedication to the study of law, strong work ethic, and congeniality makes him an excellent candidate for a clerkship. I believe he will reflect well upon your chambers now and in the future.

Please do not hesitate to contact me should you have any questions about Carlos.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael Stein', with a long, sweeping horizontal line extending to the right.

Michael Stein

Carlos A. Larrauri

9818 SW 94th Terrace, Miami, FL 33176
(305) 510-9196 • larrauri@umich.edu

Writing Sample #1

I wrote this memo for my first-semester legal research and writing class. The hypothetical case involved the fictional Reasonable Accommodations Action Network (RAAN) suing Southern Michigan University (SMU) for violating the Michigan Freedom of Information Act (MFOIA). SMU denied an MFOIA request for student data (SMUID numbers) based on the “personal privacy” exemption of MFOIA. As such, I analyzed whether SMU could meet both elements of the “personal privacy” exemption under MFOIA. This memorandum is my work product and has not been edited by other persons.

Carlos A. Larrauri
Writing Sample #1

BRIEF ANSWER

The issue is whether the Michigan Freedom of Information Act's personal privacy exemption protects the SMUID numbers. They are likely not protected. Two elements are necessary to exempt information from public disclosure. First, the information must consist of a "personal nature," and second, disclosing such information must constitute a "clearly unwarranted" invasion of privacy. A court may find that the information does not constitute a clearly unwarranted invasion of privacy because the disclosure would shed light on whether SMU is performing its statutory duty by treating students with reasonable accommodations requests fairly.

STATEMENT OF FACTS

The Reasonable Accommodation Advocacy Network is a disability rights watchdog group. It has filed an MFOIA request with Southern Michigan University to determine if the university was withholding information regarding students' requests for reasonable accommodations.

Previously, SMU had announced the creation of the REACT study to audit SMU's resources for students who request reasonable accommodations under the Americans with Disabilities Act. SMU hired Professor Theo Dun to determine how many SMU students had requested reasonable accommodations in the last three years and how many requests had been accepted or denied. Professor Dunn found that SMU approved only approximately 16% of SMU students who requested reasonable accommodations under the ADA in the last three years.

Professor Dunn subsequently distributed a spreadsheet to the SMU administration and the Board that included a list of the students used in the study to explain how he reached his results. The spreadsheet did not list the students' names, information regarding the students' accommodation requests, the medical information submitted with the requests, or whether the accommodation requests were granted or denied. After Professor Dunn presented his results, SMU President Julie Parker sent an email to the SMU administration and the Board instructing them not

Carlos A. Larrauri
Writing Sample #1

to discuss the results and to blame the budget for the delay in reporting them. When asked on air about the results of the REACT study, President Parker said, “The REACT study is currently on hold as we are determining the budget for next year. I can’t give any more information about it at this time.”

Shortly after, RAAN received an anonymous tip that SMU’s REACT study results were being kept from the public because the results were not favorable for SMU. At this point, RAAN filed its MFOIA request asking for SMU to disclose Professor Dunn’s findings, including the spreadsheet he presented to the administration and the Board. Southern Michigan University promptly responded to RAAN’s MFOIA request. It declined to disclose the spreadsheet to RAAN, asserting that disclosing Professor Dunn’s materials would reveal personal information about SMU students because there were various ways for tracing back SMUID numbers to the students’ identities. For example, the student information can be traced back to students’ names and email addresses through the SMU online directory. The SMU online directory is accessible to the public through the SMU library portal.

Instead, SMU proposed disclosing the spreadsheet to RAAN with all the SMUID numbers redacted; however, RAAN refused, explaining that some professors had committed recent fraud on similar studies. Further, RAAN explained to SMU that they required the SMUID numbers list to verify that each student used in the study was a real student who attended SMU. They explained that it did not intend to link the SMUID numbers with student identities, but instead, it would be analyzing the SMUID numbers themselves to check for numerical consistency and statistical regularity. Southern Michigan University again refused to disclose the unredacted spreadsheet, citing the personal privacy exemption of MFOIA, and stated that it was its final determination to deny the MFOIA request.

Carlos A. Larrauri
Writing Sample #1

DISCUSSION

The issue is whether SMU can withhold the requested SMUID numbers under the privacy exemption of the MFOIA. According to the Michigan statute:

It is the public policy of this state that all persons . . . are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

Mich. Comp. Laws § 15.231 (2018). The MFOIA is a pro-disclosure statute that a public body should interpret broadly to allow public access. *Id.* A public body may be exempt from disclosure of a public record, but it should interpret MFOIA exemptions narrowly to prevent undermining its disclosure provision. *Booth Newspapers, Inc. v. Univ. of Mich. Bd. of Regents*, 507 N.W.2d 422, 431 (1993). Furthermore, the burden of proving the need for the exemption applies to the public body. *Id.*

A public body may exempt from disclosure “[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy.” Mich. Comp. Laws § 15.243. A plain meaning analysis establishes that two elements are necessary to exempt information from public disclosure. *Booth*, 507 N.W.2d at 431. First, the information must consist of a “personal nature,” and second, disclosing such information must constitute a “clearly unwarranted” invasion of privacy. *Id.*

This memo will analyze the privacy exemption’s applicability. It will not scrutinize whether the student information constitutes a public record or if SMU constitutes a “public body.” Additionally, it will not examine any other exemption that SMU may invoke to withhold the student information. Southern Michigan University may be unable to protect the information from RAAN. The student information consists of a personal nature because it can be linked to individuals and associated with their request for reasonable accommodations. However, disclosing it does not constitute a clearly unwarranted invasion of privacy because it would provide the public insight into SMU’s performance of its statutory duty to treat students with accommodations requests fairly.

Carlos A. Larrauri
Writing Sample #1

I. Personal Nature.

The SMUID numbers consists of a personal nature because RAAN can connect the information to individuals. When determining whether the information is of a personal nature, it is necessary to decide whether it is embarrassing, intimate, private, or confidential. *Mich. Fed'n of Tchr. & Sch. Related Pers. v. Univ. of Mich.*, 753 N.W.2d 28, 40 (2008). Furthermore, in determining whether the information is embarrassing, intimate, private, or confidential, it is necessary to consider the community's customs, mores, and ordinary views. *Booth*, 507 N.W.2d at 432. Lastly, the information must be associated with an individual to be embarrassing, intimate, private, or confidential. *Id.*

For example, in *Larry S. Baker*, the court found that the addresses of injured persons, or persons who had been potentially injured or killed in automobile accidents, were of a personal nature because the law firm seeking the records could identify the victims from the addresses. *Larry S. Baker, P.C. v. City of Westland*, 627 N.W.2d 27, 30 (2001). A law firm sued a city after it denied a Freedom of Information Act request for addresses of injured persons and persons potentially injured or killed in automobile accidents. *Id.* at 28. The firm then revised its request, asking for only the addresses of persons and arguing that since the city would redact the names, there would be insufficient identifying characteristics. *Id.* at 30. The court did not find this argument compelling. It reasoned that having been involved in an automobile accident is an embarrassing fact and that an address is a sufficiently identifying characteristic associated with an individual. *Id.*

Second, in addition to being connected to an individual, the information would be embarrassing, intimate, private, or confidential if the information is the kind that someone would choose not to disclose. *ESPN, Inc. v. Mich. State Univ.*, 876 N.W.2d 593, 597 (2015).

For example, in *Mager*, the court focused on whether associating the names with gun ownership is potentially embarrassing, intimate, private, or confidential if disclosed. *Mager v. Dep't of State Police*, 595 N.W.2d 142, 147 (1999). An advocate requested the university police provide him

Carlos A. Larrauri
Writing Sample #1

with a list of names and addresses of persons who owned registered handguns. *Id.* at 143. However, the court held that those names were associated with gun ownership, an intimate and potentially embarrassing detail of one's life. *Id.* at 144. As such, the list constituted information of a personal nature since a citizen's decision to purchase and maintain firearms is a personal choice, and disclosing is typically a private decision. *Id.* at 143.

In our case, student information consists of a personal nature because it can be coupled with individuals and reveal potentially embarrassing, intimate, private, or confidential information that someone would typically choose to disclose. Here, the SMUID numbers can be associated with specific individuals through their names and email addresses. As such, the facts in our case are similar to *Larry S. Baker*, where the court determined an address was sufficient information for associating with a particular person. The student information can be easily traced back to students' names and email addresses through the public SMU online directory, and thus, it can be readily associated with individuals.

Furthermore, RAAN can use the individuals' names and email addresses to identify which individuals have requested reasonable accommodations from SMU. Accordingly, RAAN's case is akin to *Mager*, where the individuals' names could be easily associated with potentially embarrassing, intimate, private, or confidential information, such as gun ownership. Here, the student information can be linked to students who have requested accommodations under the ADA within the past three years. Although the request would not contain any information about the basis of the request or the type of accommodation requested, a general inquiry into a history of seeking accommodations can still be considered information potentially embarrassing, intimate, private, or confidential. Further, disclosing accommodations requests is often a private decision, and as such, the student information consists of a personal nature.

Carlos A. Larrauri
Writing Sample #1

Furthermore, the counter-argument that disclosing the student information to the university constitutes a public disclosure on behalf of the students is unlikely to persuade the court. Even if the information has been disclosed or is otherwise public, it does not mean the students consent to its disclosure in the context of RAAN's request. *Mich. Fed'n of Tchrs.*, 753 N.W.2d 28, 40 (“[D]isclosure of information of a personal nature into the public sphere in certain instances does not automatically remove the protection of the privacy exemption and subject the information to disclosure in every other circumstance.”).

In sum, the student information consists of a personal nature because it can be connected to individuals and associated with potentially embarrassing, intimate, private, or confidential information that someone would typically decide whether to disclose.

II. Clearly Unwarranted.

Nevertheless, disclosing such information does not constitute a clearly unwarranted invasion of privacy because the disclosure would provide the public insight into whether SMU treats students with reasonable accommodations requests fairly. When determining whether disclosure of information constitutes a clearly unwarranted invasion of privacy, courts need to balance the public interest in disclosure against personal privacy protection. *Mager*, 595 N.W.2d at 146. The public interest in disclosure is satisfied when the disclosure would serve FOIA's core purpose — contributing significantly to an understanding of the government's operations or activities. *Id.* In all but a limited number of circumstances, public interest in government accountability must prevail over individuals' or groups' privacy expectations. *Prac. Pol. Consulting v. Sec'y of State*, 789 N.W.2d 178, 193 (2010). Thus, if the information provides the public insight into the agency's statutory duty, it will constitute a warranted invasion of privacy, even if it is personal information. *Id.*

For example, in *ESPN*, the court determined that disclosing the records of incident reports involving student-athletes did not constitute a clearly unwarranted invasion of privacy because the

Carlos A. Larrauri
Writing Sample #1

report served the public understanding of the university's police department's operations. *Id.* at 597.

A sports television network sought the information to learn whether the policing standards were consistent and uniform at the university. *Id.* Disclosure of the students' names was necessary to determine whether student-athletes were treated differently from the general population because they participated in a particular sport or their renown. *Id.* Thus, the disclosure of names was necessary to shed light on the agency's statutory duty, even if the suspects' names in the reports amounted to information of a personal nature. *Id.*

In RAAN's case, disclosing such information does not constitute a clearly unwarranted invasion of privacy because it would further the public's understanding of SMU's treatment of students requesting reasonable accommodations. Correspondingly, RAAN's case is like *ESPN*, where disclosing student-athlete names helped the public understand if the students received differential treatment from the university's police department. Here, shedding light on how SMU operates would outweigh the students' privacy interests because it would provide the public insight into SMU's statutory duty to treat students fairly. Disclosing the student information associated with the SMUIDs would shed light on SMU's treatment of students seeking reasonable accommodations and whether SMU is approving their accommodations at a reasonable rate. Southern Michigan University approved only 16% of SMU students who requested reasonable accommodations under the ADA in the last three years. Furthermore, against the backdrop of universities' previous fraudulent activities with similar studies and lack of transparency, RAAN's request could conceivably lead to an informative inquiry and greater public accountability concerning how SMU treats students with reasonable accommodations requests.

In sum, the disclosure of student names does not constitute a clearly unwarranted invasion of privacy because the disclosure would provide the public insight into SMU's performance of its statutory duty regarding its treatment of students with reasonable accommodations requests.

Carlos A. Larrauri
Writing Sample #1

CONCLUSION

It is unlikely that Southern Michigan University can withhold the information from RAAN. Although the information constitutes information of a personal nature, the disclosure of the information does not constitute a clearly unwarranted invasion of privacy.

Applicant Details

First Name	Albert
Last Name	Le
Citizenship Status	U. S. Citizen
Email Address	lealbert@pennlaw.upenn.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>2722 Clover Meadow Court</div> <div>City</div> <div>San Jose</div> <div>State/Territory</div> <div>California</div> <div>Zip</div> <div>95135</div> </div> </div>
Contact Phone Number	4083070668

Applicant Education

BA/BS From	University of Minnesota-Twin Cities
Date of BA/BS	May 2019
JD/LLB From	University of Pennsylvania Carey Law School
	https://www.law.upenn.edu/careers/
Date of JD/LLB	May 15, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Asian Law Review
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Wang, Andrea
yanbai@law.upenn.edu
215-898-6765

deLisle, Jacques
jdelisle@law.upenn.edu
215-898-5781

This applicant has certified that all data entered in this profile and any application documents are true and correct.

May 31, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am an incoming third-year law student at the University of Pennsylvania Carey Law School. I write to apply for a clerkship in your chambers starting in the fall of 2024.

Enclosed please find my resume, my transcripts, writing sample, and letters of recommendation.

Please let me know if I can provide any additional information. I can be reached by phone at 408-307-0668 or by email at lealbert@pennlaw.upenn.edu. Thank you very much for considering my application.

Respectfully,

Albert Le
Candidate for Juris Doctor 2024

Albert Le

2722 Clover Meadow Court, San Jose, CA 95135
lealbert@pennlaw.upenn.edu · 408-307-0668

EDUCATION

University of Pennsylvania Carey Law School, Philadelphia, PA
J.D Candidate, May 2024
Honors: Associate Editor, *University of Pennsylvania Asian Law Review*

University of Minnesota, Minneapolis, MN
BA, Political Science, May 2019
GPA: 4.0

Activities/Awards:

- Collegiate Policy Debate (2016-2019)
- 2018 Hoosier Invitational Tournament Octofinalist (Open, Policy Debate)
- 2018 Crowe Warken Debates at Navy, Octofinalist (Open, Policy Debate)
- 2017 Northwest Fall Championship Semifinalist (Open, Policy Debate)
- 2017 Crowe Warken Debates at Navy, Semifinalist, 6th/44th Ranked Speaker (Novice, Policy Debate)
- 2016 American Debate Association Fall Championship Finalist (Novice, Policy Debate, 2nd Ranked Speaker in Entire Tournament)

EXPERIENCE

Gibson, Dunn & Crutcher, Palo Alto, CA May 2023 - Present
2L Summer Associate

- Assist attorneys in various legal fields: corporate, transactional, litigation

Winthrop & Weinstine, Minneapolis, MN May 2022 - July 2022
1L Summer Associate

- Assisted attorneys in various projects: food labeling litigation, meaning of commercial insolvency, property tax appeals, Supreme Court trends
- Split time at Wells Fargo, worked on immigration matters and safe deposit box law research

7Sage LSAT Prep Company, San Jose, CA Aug 2020 - Sep 2021
Independent LSAT Tutor

- Created and implement informative webinars on topics related to preparing for the LSAT, such as conditional logic and reading comprehension.
- Developed LSAT lesson plans and test-taking strategies based on individual tutee needs, goals, and testing time frame.
- Supported client load of 15-20 tutees by providing encouragement and anxiety management tips.

SKILLS & INTERESTS

- *Languages:* Vietnamese (fluent); American Sign Language (elementary)
- *Interests:* Travelling, cooking Vietnamese cuisine, online chess

Record of: Albert Le
Penn ID: 69245083
Date of Birth: 13-JUL
Date Issued: 19-MAY-2023

The University of Pennsylvania

U N O F F I C I A L

Page: 1

Level:Law

Primary Program

Program: Juris Doctor
Division : Law
Major : Law

SUBJ NO.	COURSE TITLE	SH GRD	R	SUBJ NO.	COURSE TITLE	SH GRD	R
Institution Information continued:							
LAW 6310	Evidence (Ferzan)	4.00	A-	LAW 6310	Evidence (Ferzan)	4.00	A-
LAW 6440	First Amendment (Wolff)	3.00	B+	LAW 6440	First Amendment (Wolff)	3.00	B+
LAW 8320	Asian Law Review - Associate Editor	1.00	CR	LAW 8320	Asian Law Review - Associate Editor	1.00	CR
LAW 9330	Litigating Across Borders (Wang)	3.00	A	LAW 9330	Litigating Across Borders (Wang)	3.00	A
LAW 500	Civil Procedure (Wang) - Sec 3	4.00	A-	LAW 500	Civil Procedure (Wang) - Sec 3	4.00	A-
LAW 502	Contracts (Hoffman) - Sec 3	4.00	B	LAW 502	Contracts (Hoffman) - Sec 3	4.00	B
LAW 504	Torts (Delisle) - Sec 3A	4.00	A-	LAW 504	Torts (Delisle) - Sec 3A	4.00	A-
LAW 510	Legal Practice Skills (Gowen)	4.00	CR	LAW 510	Legal Practice Skills (Gowen)	4.00	CR
LAW 512	Legal Practice Skills Cohort (Saylor)	0.00	CR	LAW 512	Legal Practice Skills Cohort (Saylor)	0.00	CR
Ehrs: 16.00				Ehrs: 14.00			
Spring 2022				Spring 2023			
LAW 501	Constitutional Law (Kreimer) - Sec 3A	4.00	A	LAW 5330	Privacy (Yoo/Steinfeld)	3.00	A
LAW 503	Criminal Law (Ossei-Owusu) - Sec 3	4.00	A-	LAW 6220	Corporations (Knoll)	3.00	A-
LAW 510	Legal Practice Skills (Gowen)	2.00	CR	LAW 6400	Federal Income Tax (Shuldiner)	4.00	A
LAW 512	Legal Practice Skills Cohort (Saylor)	0.00	CR	LAW 7130	Ethical Leadership for Lawyers (Wilkinson-Ryan)	1.00	CR
LAW 611	Consumer Law (Wilkinson-Ryan)	3.00	A	LAW 8130	Appellate Advocacy	1.00	CR
LAW 643	Chinese Law (Delisle)	3.00	A-	LAW 8320	Asian Law Review - Associate Editor	0.00	CR
Ehrs: 16.00				LAW 9340	Health Care Financing and Equity (Taliaferro)	3.00	A
				Ehrs: 15.00			
***** TRANSCRIPT TOTALS *****				***** TRANSCRIPT TOTALS *****			
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UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

May 31, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Clerkship Applicant Albert Le

Dear Judge Sanchez:

I write to recommend Albert Le for a clerkship in your chambers. I have taught Albert in two classes—civil procedure as a 1L and a seminar on Litigating Across Borders as a 2L. In both of these classes, he distinguished himself through his hard work and mastery of the materials. It has been a pleasure having him in my classes and I hope to have the opportunity to teach him again.

I first met Albert in my civil procedure class. I was impressed by his preparation for each class meeting, the knowledge he demonstrated during cold calls, and the care he took in understanding the nuances of procedural law. He often came to office hours to ask about details that I had not covered in class because I considered them too in the weeds for a 1L. He ultimately received a A- in my class, which is particularly notable given the unusually large class of over a hundred students that semester.

This fall, I had Albert in my seminar on Litigating Across Borders. He made an even stronger impression in this small group setting. The seminar had a heavy reading load and rapidly covered complex materials about dispute resolution in U.S. and Chinese courts, as well as the conceptual and practical implications of litigation across multiple legal systems. While not all the students were able to keep up with the reading, Albert came to every class ready to discuss the topic at hand. He has a remarkable ability to hold a great deal of information in his mind at once and to tie them together.

I was especially struck by his final paper on conducting cross-border discovery and compliance with the European Union's General Data Protection regulation (GDPR). The topic is fast-moving, having had changes in recent years that are not fully understood even by practitioners focused on the field. The confluence of discovery and the GDPR is a labyrinth of rules and laws that include the GDPR's provisions that seek to harmonize data protection across E.U. member states, decisions by the European Court of Justice, U.S. executive orders, as well as discovery and contract law. The paper was not just for our class, but was also for the benefit of a law firm partner who had expressed to Albert his interest in seeing his work product. Albert did a terrific job of synthesizing, analyzing, and providing practical recommendations on cross border discovery and privacy. I myself learned a great deal from his paper and his class presentation.

In sum, I am confident that Albert will make a wonderful clerk and has a promising career in private practice ahead. His diligence, keen interest, and analytical skills will undoubtedly be valuable in your chambers as well as at a law firm. If it's helpful to discuss further, please do not hesitate to contact me at yanbai@law.upenn.edu or at my cell phone at (650) 353 8162.

Sincerely,

Yanbai Andrea Wang
yanbai@law.upenn.edu
650-353-816

Andrea Wang - yanbai@law.upenn.edu - 215-898-6765

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

May 31, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Clerkship Applicant Albert Le

Dear Judge Sanchez:

I write with enthusiasm to recommend Albert Le for a clerkship in your chambers. Albert was a student in two of my classes during his 1L year, including Torts and Chinese Law. I have also worked with Albert in his capacity as a member of the staff of Penn's Asian Law Review, a journal for which I serve as faculty advisor.

Albert did an excellent job in both Torts and Chinese Law. He earned a strong A- in both classes (both of which are subject to mandatory curves, which limit the percentage of A and A- grades below what they are in many other courses. Albert's exams in both classes were solidly in the upper reaches of the class. They showed a solid mastery of the subject matter an impressive ability both to perform doctrinal analysis and to address broader and deeper conceptual issues. The two courses also had very different exam formats. Thus, Albert performed impressively across a wide range of formats, ranging from conventional issue spotters to open-ended essays and from time-limited in-class exam to word-limited take-away exam.

Albert was also very impressive in class discussion. He was always very well-prepared. He asked useful clarifying questions and made insightful points. In the torts class of approximately forty students, I use a cold call, Socratic method. Albert was always ready and able to answer. He was one of a handful of students whom I knew I could call on when the discussion in class hit a wall. He also frequently volunteered comments. His interventions were unfailingly on point and useful. They were never derailing or showboating.

In both classes, my strongest impression of him was that he is a serious and focused student who is dedicated to getting both the main points and the details right.

His approach to his work on the journal is similar. He takes it seriously and performs it carefully and well. He showed great maturity in dealing with a difficult controversy that arose with a problematic article that the journal had accepted.

As the foregoing, I trust, suggests, Albert has the intellectual skills, work habits, and temperament to be an excellent clerk. I believe he also would be a very congenial colleague for his fellow clerks. He is impressively even tempered and kind. He engages seriously with what other students say.

Sincerely,

Jacques deLisle
Stephen A. Cozen Professor of Law
Professor of Political Science
Director, Center for the Study of Contemporary China
Tel.: (215) 898-5781
E-mail: jdelisle@law.upenn.edu

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1

Albert Le
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lealbert@pennlaw.upenn.edu
(408)-307-0668

WRITING SAMPLE

The attached writing sample is an excerpt of a legal brief I prepared for my Appellate Advocacy Competition (Keedy Cup) course in the spring of 2023. The brief is a merit brief, filed on Writ of Certiorari to the Pennsylvania Supreme Court's decision in Mallory v. Norfolk. I represented the respondent, Norfolk Southern Railway Co., in arguing that the Due Process Clause of the Fourteenth Amendment prohibits a state from requiring a corporation to consent to personal jurisdiction to do business in the state. This writing sample is solely edited by me.

SUMMARY OF THE ARGUMENT

The Due Process Clause of the Fourteenth Amendment prohibits a state from requiring a corporation to consent to personal jurisdiction to do business in the state. Our jurisprudence has determined that Due Process reflects values of interstate federalism and fairness. See Ford Motor Co. v. Montana Eighth Jud. Dist., 141 S.Ct. 1017, 1024 (2021) (explaining that the rules of specific and general jurisdiction “reflect two sets of values – treating defendants fairly and protecting interstate federalism.”). When viewed under these lenses, a requirement of consent to general personal jurisdiction in order to do business runs counter to both values.

First, a requirement of consent to general personal jurisdiction violates the Due Process Clause as a notion of interstate federalism. The notion of interstate federalism requires the consideration of the interests of the forum state in which the suit is brought, and the sister states. Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty., 137 S.Ct. 1773, 1780-1781 (2017) (“The sovereignty of each State...implies a limitation on the sovereignty of all of its sister States.”) (quoting World-Wide Volkswagen v. Woodson, 444 U.S. 286, 297 (1980)). Allowing a state to require consent to personal jurisdiction as a condition to doing business violates interstate federalism as the interests of the forum state are outweighed by the interests of the sister states.

Second, a requirement of consent to general personal jurisdiction violates the Due Process Clause as a notion of fairness. In the context of personal jurisdiction, fairness requires a balancing of three factors: 1) predictability, 2) reciprocity; and 3) inconvenience to the defendant. See generally Carol R. Andrews, Another Look at General Personal Jurisdiction, 47 Wake Forest L. Rev. 999, 1001 (2012) (detailing the fairness components of personal jurisdiction). A requirement to consent to general personal jurisdiction violates predictability by vastly expanding the number of forum a suit can be brought, along with the various substantive laws that would apply. The potential possibilities of forum shopping would be devastating to the judicial system. Reciprocity is violated because the burdens of general personal jurisdiction outweigh the benefits brought by corporate registration. A requirement of consent to general personal jurisdiction creates massive litigation inconvenience to the defendant, to the point where fairness is violated.

As the petitioner has argued, Due Process Rights such as personal jurisdiction can be waived by defendants. Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 704 (1982). However, for consent to be deemed satisfactory to waive due process rights, consent must be knowing and voluntary. See Wellness Intern. Network v. Sharif, 575 U.S. 665, 665-668 (2015).

Where consent is deemed satisfied based on a corporate registration statute, such consent is not knowing. All but one of the fifty corporate registration statutes are silent on the jurisdictional

effects of registering to do business, which means corporations do not know the consequences of registering to do business. Monestier, supra, at 1387. In addition, consent in the corporate registration context is not voluntary, as the corporation is faced with a Hobson's choice. App., at 54a.

Lastly, consent is not deemed satisfactory when viewed under the lens of the unconstitutional conditions doctrine. There are four frameworks in which this Court has evaluated a condition under the unconstitutional conditions doctrine: 1) greater than lesser power, 2) germaneness, 3) offer/threat, and the 4) tri-baseline framework. See generally, Edward J. Fuhr, The Doctrine of Unconstitutional Conditions and the First Amendment, 39 Case Western Reserve L. Rev., 97, 105-111 (1989) (listing three possible frameworks). Consenting to personal jurisdiction as a condition of doing business violates all four frameworks. In conclusion, petitioner cannot plausibly argue that a corporation has waived its due process rights when it registers to do business. Therefore, a requirement that a corporation consent to general personal jurisdiction as a condition to doing business is unconstitutional under the Due Process Clause of the Fourteenth Amendment.

ARGUMENT

I. Requiring a corporation to consent to general personal jurisdiction to do business in a state violates the Due Process Clause under the lens of interstate federalism.

A. Interstate federalism is one of two values underlying the Due Process Clause.

- i. Interstate federalism as a value of Due Process has been recently affirmed by this Court.

One component of Due Process is interstate federalism. Recently, this Court recognized that the Due Process clause was an instrument of interstate federalism. Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty., 137 S.Ct. 1773, 1776 (2017). Indeed, this Court explained that restrictions on personal jurisdiction “are a consequence of territorial limitations on the power of the respective States.” Id. at 1780 (citing Hanson v. Denckla, 357 U.S. 235, 251 (1958)). This Court has recently affirmed that principles of interstate federalism are embodied in the Constitution, and must be considered in determining whether personal jurisdiction satisfies due process. See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 294 (1980).

- ii. Interstate federalism has historically been embedded within the notion of Due Process.

Before the ratification of the Fourteenth Amendment, this Court has recognized that personal jurisdiction of non-resident corporations must not be “inconsistent with those rules of public law which

secure the jurisdiction and authority of each state from encroachment by all others...” Lafayette Ins. Co. v. French, 59 U.S. 404, 407 (1855). Cases in which personal jurisdiction was allowed upon a non-resident corporation that appointed an agent in the forum state was limited to cases in which the suit arose out of the non-resident corporation’s in-state activities. See id. at 406-409 (conferring personal jurisdiction over a non-resident corporation because the insurance contract formation and breach occurred in the forum); St. Clair v. Cox, 106 U.S. 350, 356 (1882) (“The state may, therefore, impose as a condition upon which a foreign corporation shall be permitted to do business ... that it shall stipulate that in any litigation arising out of its transactions in the state, it will accept as sufficient the service of process on its agents...”). These early cases illustrate that the Court adhered to the principle that a state could exercise personal jurisdiction over a foreign corporation for causes of action arising from its activities within the state. See generally Matthew Kipp, Inferring Express Consent: The Paradox of Permitting Registration Statutes to Confer General Jurisdiction, 9 Rev. Litig., 1, 15 (1990).

Before Pennsylvania Fire, the Court never suggested that a nonresident corporation could consent to personal jurisdiction through registration for claims unrelated to the corporation’s in-state activities. See Charles W. Rhodes, Nineteenth Century Personal Jurisdiction Doctrine in a Twenty-First Century World, 64 Fla. L. Rev. 387, 443 (2012). Such personal jurisdiction runs against federalism and the state’s sovereign interest. See id. at 443-444 (“The state has no sovereign interest in regulating conduct without any connection to the

corporation's activities.”). In conclusion, interstate federalism is a crucial component of the Due Process clause, and the respective interests of the forum and sister states must be considered.

- B. Requiring a corporation to consent to general personal jurisdiction runs counter to interstate federalism as the interests of the forum state are inadequate, and the interests of the sister state outweighs.
- i. The interests of Pennsylvania – the forum state - are inadequate.

Forum states have inadequate interests to support personal jurisdiction by corporate registration upon a non-resident defendant. The most important justification for exercising personal jurisdiction over a nonresident defendant is “providing its residents with a convenient forum for redressing injuries inflicted by out of state actors.” Burger King Corp. v. Rudzewicz, 471 U.S. 462, 473 (1985) (citation omitted).

Consider the situation presented here. Norfolk’s principal place of business is in Virginia. App., at 12a. Petitioner Mallory is a resident of Virginia. Id. There is no allegation of occupational harms occurred in Pennsylvania. Id. Pennsylvania’s interest in allowing a convenient forum for its own residents is not served given that Mallory is not a Pennsylvania resident. In many cases, companies register to do business, but do not actually do so. See Kropschot Financial Services, Inc. v. Balboa Capital Corp., No. 11 Civ. 8609 SAS, 2012 WL 1870697, at *1-*2 (S.D.N.Y. May 21, 2012) (observing that Balboa has no offices, bank accounts, property, or

employees in the forum state). As in Norfolk's case and many other businesses, the interests of the forum state would not be served as the state is not providing a forum for its own residents, and is potentially exercising jurisdiction over businesses that do not actively do business in the state. It stretches the imagination to see how residents of the forum state would have interests in the controversy where non-resident citizens are the ones using the forum, and where the business activities of the defendant corporation are so wholly unrelated to the forum state.

On the contrary, requiring consent to personal jurisdiction as a condition of doing business would actively run counter to the interests of the forum states. This Court has recognized that the public interests of the forum state would not be served when citizens of the forum state are burdened with jury duty regarding cases with little connection to the controversy. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 243-244 (1981). In this case, Pennsylvania has little connection with the dispute at issue, and conferring general personal jurisdiction based on mere corporation registration would burden the citizens of Pennsylvania. See App., at 45a (observing that there is no connection between the case and Pennsylvania). Additionally, the interests of the forum state would not be served where evidentiary concerns would make "trial... hopelessly complex and confusing for a jury." Piper, 454 U.S. at 243. In Piper, both the witnesses and the relevant evidence were more easily obtainable in an alternative forum, and this Court concluded the potential costs with having the case tried in Pennsylvania (as opposed to

Scotland) would run against the interests of Pennsylvania. Id.

Permitting consent to personal jurisdiction as a requirement to do business would yield similar concerns. In this case, all the harms allegedly occurred outside of Pennsylvania, which would mean the costs of obtaining the witnesses and relevant evidence would run counter to the interests of Pennsylvania. In addition, it would be more confusing to try the case in Pennsylvania, given that the relevant laws are those of Virginia. The forum state might choose to apply the law of its sister state, in which case the trial would be more time confusing given the judge is more acquainted with the law of its own state. Alternatively, the forum state could apply the law of its own state, in which case the sovereignty of the sister state is threatened. In either situation, the result is undesirable.

- ii. The interests in having the dispute tried in Virginia outweigh the interests of Pennsylvania.

As stated previously, states have a considerable interest in providing a convenient forum for their own residents. Burger King, 471 U.S. at 473. The harms potentially occurred while petitioner was employed in Virginia, and petitioner is a resident of Virginia. App., at 12a. This vindicates Virginia's own interest in having the dispute litigated there, in order to provide Mallory with a convenient forum for litigation. Second, with some of the relevant evidence and witnesses located in Virginia, this alleviates inconvenience concerns as well. Lastly, as Norfolk's principal place of business and incorporation is in Virginia, with substantial business activities, this connection both

substantiates Virginia's interest in having its laws apply to its own businesses, and ensures that the citizens of Virginia are not burdened with jury duty.

Fundamentally, laws are enacted through the political processes of respective states. Laws embody the choices made by citizens when they vote for their representatives. USCIS, Participating in a Democracy, at 1, https://www.uscis.gov/sites/default/files/document/lesson-plans/Intermediate_RightsandResponsibilities_handouts.pdf. This Court has recognized that citizen participation in the democratic process of voting is a significant interest. Crawford v. Marion County Election Bd., 553 U.S. 181, 197 (2008). In petitioner's case, the relevant laws are Virginia laws that embody the policy choices of Virginia citizens. Virginia citizens have much stronger interests in applying their own laws, rather than Pennsylvania. This Court should allow Virginia citizens to apply their own laws, in order to effectuate their participation in the democratic process. Virginia citizens are much more equipped to apply their own laws, given they made the relevant policy choices when voting for representatives who enacted them. To allow Pennsylvania to either interpret Virginia's laws or apply its own laws would intrude upon Due Process and the accompanying principle of interstate federalism.

II. Requiring a corporation to consent to general personal jurisdiction to do business in a state violates the Due Process Clause under the lens of fairness.

A. Fairness is one of two values underlying the Due Process Clause.

In addition to interstate federalism, determining whether personal jurisdiction comports with due process requires a consideration of fairness to the defendant. See Ford Motor Co. v. Montana Eighth Jud. Dist., 141 S.Ct. 1017, 1024 (2021) (explaining that the rules of specific and general jurisdiction “reflect two sets of values – treating defendants fairly and protecting interstate federalism.”); Perkins v. Benguet Consolidated Mining Co., 342 U.S. at 445 (“The essence of the issue here, at the constitutional level, is a like one of general fairness to the [defendant]”); Andrews, supra, at 1016 (“Fairness is the fundamental aim of personal jurisdiction analysis.”). The consideration of fairness to the defendant arose out of the seminal case of International Shoe Co. v. State of Washington, 326 U.S. 310, 317 (1945), in which the Court held that due process requires that the maintenance of the suit does not offend “traditional notions of fair play and substantial justice.” This Court has set forth values which embody what it means for Due Process to comport with fairness to the defendant. In particular, fairness to the defendant requires a consideration of three factors: 1) predictability for the defendant in knowing where they will be haled into court, 2) reciprocity between the benefits and burdens of acting within a state; and 3) the litigation inconvenience to the defendant. Requiring a corporation to consent to personal jurisdiction as a condition to doing business violates all three fairness concerns, and therefore violates due process. See generally Andrews, supra, at 1001

(explaining the fairness components of personal jurisdiction).

B. Requiring a corporation to consent to general personal jurisdiction violates the predictability component of fairness.

i. Predictability is a crucial component of fairness.

Predictability is a crucial component of fairness. See Andrews, supra, at 1001 (2012) (proposing that predictability be considered when looking at fairness in regards to general personal jurisdiction); Lee Scott Taylor, Registration Statutes, Personal Jurisdiction, and the Problem of Predictability, 103 Colum. L. Rev. 1163, 1193 (2003) (arguing that the nature of the specific harm of multiple jurisdictions is that of unpredictability). This Court has recognized that the Due Process Clause must give some level of predictability to allow “potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will...render them liable to suit.” Burger King, 471 U.S. at 472 (citation omitted). The defendant should reasonably anticipate being haled into court. Id. at 474. While Burger King dealt with specific jurisdiction, this Court has recently infused notions of predictability as part of the general jurisdiction analysis. See Alan M. Trammell, A Tale of Two Jurisdictions, 68 Vand. L. Rev. 501, 524 (2015) (“Goodyear and Daimler vindicate a distinct vision of personal jurisdiction: courts may not exercise their adjudicative power in arbitrary ways.”).

This Court has conferred general jurisdiction to those places where the defendant is “at home” because such locations allow for a defendant to see where they may be haled into court. Daimler AG v. Bauman, 571

U.S. at 137 (2014) (quoting Hertz Corp. v. Friend, 559 U.S. 77, 94 (2010) (“Simple jurisdictional rules...promote greater predictability..”). This Court has “declined to stretch general jurisdiction beyond [the place of incorporation or principal place of business].” Daimler, 571 U.S. at 132. Where an exception has been recognized, such as Perkins, the Court has stated that the decision was one based on “exceptional facts.” Daimler, 571 U.S. at 129 n.8. This Court has stated it will extend general jurisdiction not merely to locations where the defendant’s contacts are continuous and systematic, but those affiliations must be **so** continuous and systematic as to render the corporation essentially at home. Id. at 138-139.

- ii. Consent to general jurisdiction based on corporate registration is not predictable when comparing to this Court’s traditionally recognized locations where a corporation is “at home.”

To allow for general jurisdiction merely on the basis of corporate registration would conflict with predictability. Corporate registration does not fit into those categories traditionally defined as conferring general jurisdiction. Those traditional categories are those where the corporation is “at home,”: its principal place of business or place of incorporation. Daimler, 571 U.S. at 132-137. All fifty states have the same laws requiring registration. Monestier, supra, at 1390. Given that a corporation can typically register to do business in more than one state and in any state, a corporation would be subject to general jurisdiction beyond its principal place of business or place of incorporation. Realistically, a corporation could be subject to general jurisdiction in all fifty states. As a policy matter, this resulting lack of

predictability would not only be inefficient for business operations, but subsequently detrimental to the common good. Genuine Parts Co. v. Cepec, 137 A.3d 123, 143 (Del. 2016). This multiplication of jurisdictional possibilities reduces predictability and is an independent cognizable harm. Taylor, supra, at 1193. In this case, no corporation could reasonably anticipate where they would be haled into court, as general jurisdiction could increase the potential forum to all fifty states. See App. at 54a (“If Pennsylvania’s legislative mandate of consent by registration satisfied due process...all states could enact it, rendering every national corporation subject to the general jurisdiction of every state.”).

- iii. This Court should not extend corporate registration to confer general jurisdiction based on the Perkins exception.

In Daimler, the Court recognized that general jurisdiction was only allowed in Perkins as an “exceptional case,” where the corporation’s operations were so substantial and of such a nature as to essentially be “at home.” Daimler, 571 U.S. at 139 n.19. Corporation registration does not rise to that level. Indeed, general jurisdiction based on corporate registration would reach any corporation that registered to do business, regardless of whether business was actually conducted. Monestier, supra, at 1405. Encompassing corporate registration within general jurisdiction would allow for general jurisdiction even where the corporation’s operations are precisely the opposite of substantial.

In Daimler, the Court recognized that Daimler’s corporate activities in California were “sizable,” yet still declined to extend general jurisdiction to

California. Id. at 139. The Court reasoned this extension would mean Daimler would be subject to general jurisdiction in every single state in which the sales were sizable, resulting in unpredictability. Id. Allowing general jurisdiction for mere corporate registration would reach an even more unfair result, given corporations do not have to conduct “sizable” business or really any business at all.

In Perkins, the Court extended general jurisdiction beyond the corporation’s principal place of business or place of incorporation. Id. at 438. This Court observed that the President of the corporation maintained an office in Ohio, conducted administrative duties from that office, and directed future operations from that office. Id. at 447-448. In contrast, a corporation could register to do business in a state, while maintaining no contacts in that state at all. Monestier, supra, at 1405. The Perkins exception for general jurisdiction should not be extended to corporate registration.

- iv. Forum shopping would be rampant, and violate fairness through creating unpredictable application of laws.

Conferring general jurisdiction upon mere corporate registration would create unpredictable and unfair substantive changes through forum shopping. If corporate registration were a sufficient basis to do business, plaintiffs can easily locate a forum that will be most favorable to them. Monestier, supra, at 1409-1410. In the context of corporate registration, of particular concern is where a statute of limitations period has run out in the state in which the harm occurred, only for the plaintiff to locate any other forum in which the statute of limitation would not

have expired. See generally Monestier, *supra*, at 1411 (referring to *Cowan v. Ford Motor Co.*, 694 F.2d 104, 105 (5th Cir. 1982) as the poster child for forum shopping). Consider the petitioner's case. It should come as no surprise that Mallory filed suit in Pennsylvania, even though juries might be more favorable to Mallory in Virginia, given his status as a Virginia resident. Pennsylvania has been described as a "litigation magnet," with large numbers of plaintiffs willing to give up home field to take advantage of favorable laws. Mark A. Behrens & Cary Silverman, *Litigation Tourism in Pennsylvania*, 22 *Widener L. J.* 29, 35-37 (2012).

Applicant Details

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 Last Name **Leban**
 Citizenship Status **U. S. Citizen**
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State/Territory
Connecticut
Zip
06511
Country
United States

Contact Phone Number
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Applicant Education

BA/BS From **Mount Holyoke College**
 Date of BA/BS **May 2018**
 JD/LLB From **Yale Law School**
https://www.nalplawschools.org/content/OrganizationalSnapshots/OrgSnapshot_225.pdf
 Date of JD/LLB **June 1, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Yale Law Journal**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

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Gutierrez, Vanessa
vanessa@nwirp.org

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

ROSALYN DIETRICH LEBAN

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June 12, 2023

Hon. Juan R. Sanchez
United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Chief Judge Sanchez:

I am a rising third-year student at Yale Law School writing to apply for a clerkship in your chambers for the 2024-2025 term or any term thereafter.

I hope to clerk in your chambers because I am interested in criminal defense and immigration litigation. Conversations with public defenders revealed that a clerkship in a trial court would be an incomparable opportunity to immerse myself in the litigation process and improve my writing skills. What convinced me to clerk was when a public defender told me, "Clerking makes you a better lawyer. Don't poor people deserve the best possible lawyer?" Though I have been here only a short time, my experience interning at the Office of the Federal Public Defender for the District of Oregon after my second year of law school has solidified my commitment to clerking after law school so that I can become the best possible lawyer for my future clients.

My research and writing experience have prepared me for a clerkship in your chambers. I am an editor for the *Yale Law Journal*. I have researched and drafted memos about employment law, criminal law, immigration law, and family law. At the Office of the Federal Public Defender for the District of Oregon, I developed familiarity with federal criminal law and procedure.

I enclose a resume, transcript, and writing sample. Attorney Vanessa Gutierrez of the Northwest Immigrant Rights Project will submit a letter of recommendation on my behalf. Professors Christine Jolls and Marisol Orihuela of Yale Law School will also submit letters. Thank you for your consideration.

Sincerely,

Rosalyn Leban

ROSALYN LEBAN

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EDUCATION

YALE LAW SCHOOL, New Haven, Connecticut

J.D., expected June 2024

Activities: Editor, *Yale Law Journal*; National Lawyers Guild; Law & Political Economy Project; Environmental Law Association; Immigrant Justice Project; Jewish Law Students Association; Disabled Law Students Association; OutLaws

MOUNT HOLYOKE COLLEGE, South Hadley, Massachusetts

A.B., *magna cum laude*, English; May 2018

Honors: Phi Beta Kappa; Kelly Sottile Community Service Award; Global-Local Fellowship

Activities: Undocumented Immigrant Alliance Chair; Speaking, Arguing, and Writing Center Mentor; Community-Based Learning Fellow

Minors: Mandarin Chinese; Educational Policy & Practice

Study Abroad: Managua, Nicaragua and Havana, Cuba (Spring 2017); Xi'an, China (Summer 2017)

EXPERIENCE

OFFICE OF THE FEDERAL PUBLIC DEFENDER, Portland, Oregon

Summer 2023

Certified Law Clerk

Research and draft motions to suppress evidence; interview clients; and negotiate cases with the U.S. Attorney's Office.

MENTAL HEALTH JUSTICE CLINIC, New Haven, Connecticut

Spring 2023-Present

Clinical Student; Student Director (Fall 2023)

Research and draft a memo about the application of the Rehabilitation Act to the U.S. Probation and Pretrial Services System. Research legal limitations on the use of drug tests in Department of Children & Families enforcement.

LAWYERS FOR GOOD GOVERNMENT, Brownsville, Texas & Reynosa, Tamaulipas, Mexico **March 2023**

Volunteer

Researched and drafted a comment in response to a proposed immigration rule limiting asylum. Gave know-your-rights trainings in migrant camps in Tamaulipas, Mexico.

MEDICAL-LEGAL PARTNERSHIP, New Haven, Connecticut

Fall 2022

Clinical Student

Researched and drafted a memo about consumer debt protection for cancer patients. Conducted civil legal intake interviews.

NORTHWEST IMMIGRANT RIGHTS PROJECT, Wenatchee, Washington (Remote)

Summer 2022

Legal Intern

Drafted legal briefs in support of applications for immigration relief, including a successful application for prosecutorial discretion for an individual with prior convictions.

YALE LAW SCHOOL, New Haven, Connecticut

Summer 2022

Research Assistant for Douglas NeJaime, Muneer Ahmad, and Lucas Guttentag

Researched and drafted memos about family law issues and privacy laws governing mental health services for clinical law students. Traced and coded developments in immigration law.

LAW & POLITICAL ECONOMY PROJECT, New Haven, Connecticut

Spring 2022

Research Assistant for John Whitlow

Researched and drafted memos about constitutional challenges to tenant collective bargaining legislation.

OREGON LAW CENTER, Portland, Oregon (Remote)

Spring 2022

Employment Law Clerk

Drafted memoranda and mediation outlines for ongoing worker abuse cases related to immigrant cannabis workers, including examining civil and criminal strategies.

LEBAN**Page 2****HAVEN FREE CLINIC**, New Haven, Connecticut**Spring 2022***Volunteer*

Conducted intake interviews in Spanish and assessed civil legal claim viability.

SOUTHERN POVERTY LAW CENTER, Alabama, Georgia, Louisiana & Mississippi (Remote) **2019–2022***Volunteer*

Interpreted meetings between detained immigrants and attorneys. Translated legal documents from Spanish.

CLARK LAU LLC, Boston, Massachusetts**2019–2021***Immigration Paralegal*

Researched and drafted briefs demonstrating Filed petitions for immigration benefits for family and employment immigration cases. Prepared strategy, drafted briefs for government agencies, and conducted legal research regarding regulations and precedent.

THE FULBRIGHT PROGRAM, Guatemala City, Guatemala**2018–2019***Fulbright Research Fellow*

Created case management protocols for missing Central American migrants for the community-based organization Pastoral de Movilidad Humana and the UNHCR. Protocols are now used in four countries.

GRANTS AND AWARDS

CITIZEN DIPLOMACY ACTION FUND GRANT, U.S. Department of State, 2019 & 2021: Awarded for public service projects focused on LGBTQ and disabled youth in Managua, Nicaragua

DAVIS PROJECTS FOR PEACE GRANT, Davis United World Scholars Program, 2018: Awarded for a community-centered project focused on food security in Managua, Nicaragua

CRITICAL LANGUAGE SCHOLARSHIP, U.S. Department of State, 2017: Awarded for Mandarin Chinese language study in Xi'an China

LANGUAGES & INTERESTS

Fluent in Spanish. Advanced in Mandarin. Enjoy hiking, reading multigenerational novels, and cooking.

YALE LAW SCHOOL

Office of the Registrar

**TRANSCRIPT
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Date Entered: Fall 2021

Page: 1

Candidate for : Juris Doctor MAY-2024

SUBJ	NO.	COURSE TITLE	UNITS	GRD	INSTRUCTOR
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Fall 2021

LAW	10001	Constitutional Law I: Group 2	4.00	CR	P. Gewirtz
LAW	11001	Contracts I: Section B	4.00	CR	A. Schwartz
LAW	12001	Procedure I: Section A	4.00	CR	A. Gluck
LAW	14001	Criminal Law & Admin I: Sect B	4.00	CR	D. Kahan
Term Units			16.00	Cum Units	16.00

Spring 2022

LAW	21136	Employment and Labor Law	3.00	H	C. Jolls
Substantial Paper					
LAW	21150	The Future of Human Rights	2.00	CR	P. Gewirtz, N. Becquelin
LAW	21601	Administrative Law	4.00	H	N. Parrillo
LAW	21608	Torts and Regulation	4.00	P	J. Witt
LAW	40001	Supervised Research	1.00	CR	A. Gluck
LAW	50100	RdgGrp: Race & Climate Change	1.00	CR	G. Torres
Term Units			15.00	Cum Units	31.00

Sup. Research: Examining the Position of Immigrant Workers in the Cannabis Industries.

Fall 2022

CHNS	150	Advanced Modern Chinese I	2.00	CR	H. Chan
LAW	20097	Medical Legal Partnerships	3.00	H	A. Gluck, J. Bhandary-Alexander, K. Kraschel
LAW	20247	AmrcnIndianSovrgntyProj:DirRes	2.00	H	M. Bell
LAW	20486	Advanced Legal Research	2.00	H	J. Nann
LAW	20583	Post-Conviction Crim Procedure	2.00	H	J. Carroll
LAW	20611	Immigration Law	4.00	H	A. Kalhan
Term Units			15.00	Cum Units	46.00

Spring 2023

LAW	21050	Federal Income Taxation	4.00	H	A. Alstott
LAW	21277	Evidence	4.00	P	S. Carter
LAW	21546	LitigatingCivRtsPolicingImpris	3.00	H	B. Azmy
LAW	30255	Mental Health Justice Clinic	2.00	H	M. Orihuela, D. Loehr
LAW	30256	MentlHealthJsticClinic:Fldwrk	2.00	H	M. Orihuela, D. Loehr
LAW	50100	RdgGrp:Immigrant Justice	1.00	CR	C. Rodriguez
Term Units			16.00	Cum Units	62.00

***** END OF TRANSCRIPT *****



HEATHER ABBOTT, REGISTRAR

Official transcript only if registrar's signature, embossed university seal and date are affixed.

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

RE: Clerkship Recommendation for Rosalyn Leban

Dear Judge Sanchez:

I write to offer an enthusiastic recommendation for Rosalyn Leban's application to clerk in your chambers. I worked very closely with Rosalyn this past semester through one of the clinics that I teach and have known her since her 1L year. She is sharp, thorough, and principled in her legal and factual analysis. Rosalyn is someone I already trust to identify weaknesses in potential advocacy methods and arguments, a quality that will benefit any chambers in which she works. She is also generous and committed to collaboration. She will make a great clerk, and I hope you consider hiring her.

I first met Rosalyn during her first year at law school through my office hours. In the course of our conversations, I found Rosalyn to be deeply inquisitive, mature, and open-minded. She arrived at law school with a strong sense of self but demonstrated commitment to both professional and personal development. Rosalyn stood out to me as particularly mature and grounded for a first-year law student.

When Rosalyn applied to enroll in the Mental Health Justice Clinic (MHJC), a course I launched at Yale Law School this past semester, I jumped at the chance to admit her, and have not regretted that choice. Rosalyn has been a standout student, often taking seminar discussions to deeper levels, offering honest and vulnerable self-reflection, and eagerly exploring the advocacy opportunities in the clinic. I have asked her to serve as a student director in the clinic this upcoming academic year, and she intends to continue her enrollment in the clinic to pursue additional litigation and policy advocacy experience.

The MHJC exposes law students to a variety of advocacy methods in representing individuals with mental disabilities. Each student in the clinic engages in individual representation and works on a policy advocacy matter. In the representational matters, students explore how disability law interacts with legal detention schemes in both the criminal and civil arenas. In the policy advocacy matters, students advocate for evidence-based practices pertaining to mental disability. This past semester, Rosalyn and her teammates represented an individual with a mental disability as he maneuvered federal supervised release, with the goal of helping the client avoid re-incarceration. Rosalyn conducted research into whether disability rights law may apply in the federal supervision context, and, if so, how the reasonable accommodations framework could modify models of federal supervision. This research is timely, as advocates expand the use of disability law in different advocacy contexts, and the area of law underexplored, as the application of disability law in the federal supervision context has not been fully litigated in the courts. As a result, Rosalyn and her teammates have engaged in creative strategic planning to advocate for their client with the United States Probation Office while they develop potential legal claims should litigation be necessary.

In her policy advocacy matter, Rosalyn and her teammate worked in partnership with a pediatric hospitalist from the Yale School of Medicine on developing evidence-based practices regarding substance use by pregnant people in family regulation. Rosalyn researched practices by the Connecticut Department of Children and Families (DCF) and judicial application of substance use in family regulation under Connecticut law and worked with numerous advocates to identify potential areas of advocacy in Connecticut. Rosalyn's policy work touches upon a timely national topic – evidence-based harm reduction strategies around the substance use crisis. Rosalyn will continue to develop this advocacy in the upcoming semesters.

In both of her matters in the clinic, Rosalyn demonstrated a great capacity to identify the strengths and weaknesses of potential advocacy strategies. While many students are eager to focus on the reasons why a client should succeed, Rosalyn helped her team refine positions and arguments with her nuanced understanding of potential weaknesses in the team's arguments. This quality helps makes Rosalyn a great advocate, but it will also serve her well in any clerkship. Similarly, Rosalyn was also fearless in raising hard topics, both in her casework and in seminar. She was often vulnerable in her self-reflection, asked difficult questions about the attorney-client relationship, and showed authenticity in her development of a professional identity. These qualities made Rosalyn a joy to work with and supervise and indicate a level of maturity that I think would benefit her during a clerkship.

Rosalyn would be a great addition to any chambers. I hope you decide to interview her. Should you have any questions about this letter or my recommendation, please feel free to contact me at 404.625.2307.

Sincerely,

/s/ Marisol Orihuela

Clinical Associate Professor of Law

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June 9, 2023

Subject: Letter of Recommendation for Rosalyn Leban

Dear Judge:

I write to highly recommend Rosalyn Leban for consideration for a federal court clerkship within your chambers. I had the privilege of supervising Rosalyn during her internship at the Northwest Immigrant Rights Project (NWIRP), during the summer of 2022. From the moment she joined NWIRP, it was evident that Rosalyn possesses a unique combination of skills and qualities that set her apart from her peers. She embraced a high volume, high stakes workload of various types of humanitarian based immigration cases, and approached the work with dedication and humility. No task assigned to her was ever too basic or too complex. She always produced high quality work.

Rosalyn is a strong and effective communicator. Her written work was consistently clear and precise, and required little to no editing. She possesses a keen understanding of complex legal concepts and can effectively communicate them in a manner that is accessible to both legal professionals and laypersons.

Due to the COVID-19 pandemic, Rosalyn's internship was fully remote. Despite the challenges of remote legal work, Rosalyn was able to build rapport with all of the clients that she was tasked to work with, including survivors of domestic violence and sexual assault and asylum seekers fleeing persecution in their home countries. Rosalyn possesses an innate ability to listen attentively, comprehend complex information, and convey her thoughts effectively. She consistently engaged with clients in a respectful and empathetic manner, ensuring that their needs and concerns were addressed with the utmost care and diligence. Her ability to build trust with individuals from diverse backgrounds greatly enhanced her effectiveness as an advocate and legal professional.

Rosalyn consistently demonstrated a strong ethical compass, unwavering commitment to the principles of fairness and equity, and a genuine desire to make a positive impact on the lives of vulnerable individuals. Her passion for social justice issues was evident in her work and interactions with clients and colleagues. I firmly believe that Rosalyn will continue to champion justice and work diligently to uphold the values and integrity of the legal profession.

I have no doubt that Rosalyn will be an exceptional attorney in the near future, bringing immense value to any organization or institution fortunate enough to have her as part of their team. It is without hesitation that I offer my highest recommendation for Rosalyn Leban for a federal court law clerkship position.

Sincerely,

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Writing Sample

I prepared the attached memorandum for a client in the Mental Health Justice Clinic. The memorandum examined whether and how an individual subject to federal supervised release could request disability accommodations. Here, I present a portion of the discussion section of the memorandum.

To preserved client confidentiality, all identifying information has been removed. I have received permission from my clinical supervisors to share this redacted version as a writing sample.

I discussed the topic with my clinical team prior to writing. This writing sample has not been revised by others.

Discussion

Mr. [REDACTED] can request reasonable modifications to United States Probation and Pretrial Services (USPO) policy to enable him to participate in supervised release. USPO would be required to accommodate at least some of his requests under either the Rehabilitation Act (RA) or federal judicial policy.

Most disability discrimination litigation falls under the Americans with Disabilities Act (ADA). However, the ADA does not apply to USPO. The ADA exempts “the United States” and corporations “wholly owned by the government of the United States” from the requirements of the statute. 42 U.S.C. § 12111(5)(B)(i) (2018). Since USPO is a part of the federal judiciary, the ADA does not apply.

Although the ADA does not apply, ADA requirements and precedent provide the framework for analyzing Mr. [REDACTED]’s potential avenues to disability accommodations under the RA and federal judicial policy. The Second Circuit generally treats claims under the RA “identically” to claims filed under the ADA. *Henrietta D. v. Bloomberg*, 331 F.3d 261, 272 (2d Cir. 2003). Although few cases have been litigated, litigation under federal judicial policy could follow a similar analysis. *C.f. Patrick v. U.S. Postal Serv.*, No. CV-10-0650-PHX-ECV, 2010 WL 4879161, at *4 (D. Ariz. Nov. 23, 2010) (unreported).

1. Federal supervision officers may be subject to the requirements of the Rehabilitation Act.

USPO may be required to accommodate individuals with disabilities under the RA because USPO conducts activities with federal funding.

Under both the ADA and the RA, individuals with disabilities must be provided reasonable accommodations. The ADA requires covered entities to “make reasonable

modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the natures of the service, program, or activity.” 28 C.F.R. § 35.130(b)(7) (2023). The entity must make a modification to enable a disabled person to participate unless it can demonstrate that the proposed modification is a “fundamental alteration” or would cause “undue hardship.” *Henrietta D.*, 331 F.3d at 272

The RA requires showing “(1) that the [entity] is subject to the statute under which the claim is brought, (2) that she is an individual with a disability within the meaning of the statute in question, (3) that, with or without reasonable accommodation, she could perform the essential functions of the [activity], and (4) that the [entity] had notice of the plaintiff’s disability and failed to provide such accommodation.” *Lyons v. Legal Aid Soc’y*, 68 F.3d 1512, 1515 (2d Cir. 1995); *see also, e.g., U.S. Airways v. Barnett*, 535 U.S. 391, 405 (2002). The second and third requirements are unlikely to present issues for Mr. [REDACTED] because he has been diagnosed with PTSD. USPO may be subject to the RA because its activities receive federal funding, but it may not be because the statute does not specifically cover the federal courts. Mr. [REDACTED] could satisfy the fourth requirement by documenting his requests. If Mr. [REDACTED] shows that the RA applies, he would need to prove that the modifications he proposed were reasonable considering his circumstances and USPO’s position.

USPO may be subject to the RA because it receives federal funding. Section 504 of the RA, which prohibits discrimination against people with disabilities, applies to “any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.” 29 U.S.C. § 794 (2018). To state a claim under the RA, one fact Mr. [REDACTED] would need to prove is that “the program providing